

CITY OF CHATTANOOGA
STORMWATER REGULATIONS BOARD

REPORTER'S TRANSCRIPT OF:

PUBLIC PROCEEDINGS OF
WEDNESDAY, JANUARY 27, 2010
3:00 p.m.
1250 Market Street
Chattanooga, Tennessee 37402-2713

APPEARANCES:

Jim B. Moegling, Chairman

Doug Stein, Vice Chairman

Valerie Malueg, Assistant City Attorney

Jeffrey Sikes

Barry Payne

Harry E. Tate

Mary "Cissy" May

Gerish Patel

Ken DeFoor

Don Wallis

Mounir (Mo) Minkara,
Water Quality Manager
Stormwater Management

1 MR. MOEGLING: I hope we have a couple more
2 members show up. Right now we have six. We'll call
3 the meeting to order.

4 First of all, I missed the last meeting and was
5 just talking to Mel Jackson. He was on our committee
6 until after the last meeting. Officially, I wanted to
7 thank you for the time you spent with us, Mr. Jackson.
8 We certainly appreciated your input and your wisdom and
9 we'll miss you. And Clyde Sawyer, since that point in
10 time, we've had new appointments to the board. And
11 I'll have to read -- that's Jeffrey Sikes.

12 MR. SIKES: Jeff Sikes.

13 MR. MOEGLING: The other new member is Barry
14 Payne. So I hope he comes so we know what he looks
15 like. Other than that, in the minutes last meeting,
16 there was some special things that went along with
17 what's happening with the Blue Ribbon Rate Review
18 Committee.

19 This committee recommended to that board that
20 we move forward with the new rate structure. Okay.
21 And that resolution went through the staff, through the
22 City Council.

23 With that -- I've been through the meetings,
24 minute meetings, minutes of the meeting, and they look
25 fine to me. I was not at the meeting so I rely on

1 everybody else. Are there any changes, improvements in
2 the minutes, as we go through? Look for a motion to
3 accept them as read.

4 MS. MAY: I so move.

5 MR. MOEGLING: Second?

6 MR. WALLIS: Second.

7 MR. MOEGLING: We have a motion and second that
8 the minutes, as written, be approved. All in favor say
9 aye?

10 (All said aye in array.)

11 MR. STEIN: And opposed? Okay. That approved
12 that takes care of that. I see Doug came in.

13 Oh, I guess we can get started on the violation
14 of TDEC. Looking at the last minutes, it looks like
15 there was some indication that we had some problems.
16 Understandings for the general public here is that the
17 local TDEC and EPA came and looked at our program last
18 September of 2008.

19 MR. MINKARA: Correct.

20 MR. MOEGLING: We didn't receive a report back
21 from them until June of 2009, with several things that
22 we were not meeting the requirements of our permit.

23 MR. MINKARA: That's correct.

24 MR. MOEGLING: That's the reason we want to go
25 over these things in detail. They're quite extensive.

1 I guess the biggest problem I see, in general, is with
2 this new rate increase. We think and thought we were
3 in great shape. We never had feedback that we were not
4 meeting the program.

5 We said there were things that we knew we had
6 to do but we were on schedule. We thought we were in
7 great shape. Then this new review, I think, caught
8 everybody somewhat by surprise. And now the question
9 is, what is the extent and what is the impact or
10 potential on the rates now or in the future?

11 Just to give us a general idea of what they saw
12 as problems and what we're doing about them, and if we
13 can make any guesses about potential costs. So with
14 that . . .

15 MR. MINKARA: Okay. I appreciate the
16 opportunity to -- for the City staff to be able to
17 address this issue in front of the Board. As you all
18 know, we were under consent order that was issued May
19 of '05. I have handed out the new folder. There are a
20 lot of new documents, one of them says "TDEC
21 Evaluation, looks just like this.

22 Says "TDEC Evaluation." And it lists all the
23 inspections that were performed by TDEC and the results
24 of the inspections since December 2002.

25 I know we don't have time to go over every

1 item, but you may want to go back after the meeting,
2 and if you need more details, feel free to review this.

3 The State has been here almost every year for
4 the last six, seven years, and there has been some
5 funding over the years. The major funding was in
6 December of '02. And there has been a lot of direct
7 violations. And the City has taken actions since then,
8 hired some staff, updated a lot of documents, conducted
9 inspections, revised some procedures, evaluated
10 different programs to address the issues that were
11 identified in '02.

12 And as a result of the inspections, there has
13 been some issues not resolved between '02 and the time
14 that the consent order was signed in '05. So the
15 consent order covered the issues that were not resolved
16 between '03 and '05.

17 And there were ten items in the order. And
18 these items, as most of you know, we'll brief you on
19 the progress of them. The major one is the as-found
20 project, mapping all the City's stormwater systems. For
21 the new members, this is the capital project that the
22 City spent about \$5 million on for the last four years.
23 Even this project, the City, the State has said it's
24 not complete.

25 Just giving you an example of where we agree or

1 don't agree with the State on the as-found project, we
2 believe that the City has met all potential and
3 identified all known structures. And the project was
4 laid out in different steps, different phases. Phase 1
5 was the pilot project. And the City is aware of some
6 issues in this phase of the project, where we mapped
7 Chattanooga Creek area and Dobbs Branch area, this was
8 the pilot project.

9 So as the permit says, this is a pilot project
10 that the City will go in and learn how to map
11 stormwater structures. So there are some issues in
12 this part of the project. The State, they said, well,
13 because there's some missing structures or some
14 structures that were not clearly described or
15 characterized, the project is not in compliance with
16 the order.

17 Another example is another project that is part
18 of the order we spent three and a half, four years, on
19 is the watershed characterization, where we identified
20 also a pilot watershed, in this case it was Citico
21 Creek. And I'm referring to page 2 in the TDEC
22 evaluation of highlighted items. We identified an area
23 where we can go and specify a lot of parameters, mainly
24 water quality sampling parameters. We identified a
25 special project which is the slab-to-service line and a

1 curb project. And we're supposed to do a sampling and
2 monitoring, modeling.

3 we did all this. We hired staff to do this.
4 We collected samples. There were some issues in the
5 data sampling, some data was not according to certain
6 procedures. For example, there's a lack of certain
7 signatures on some of the lab sheets or the lab report
8 did not show the technician that was running the
9 machine.

10 So there's a few issues in those sampling
11 reports. I'm assuming that because of those reasons,
12 the State said we did not meet this older requirement.
13 So there are some issues, one or two issues, that the
14 State identified. And they say, Hey, because of this,
15 the City is not in compliance with this order.

16 We also are aware -- we are aware of some
17 issues we already have monitoring the program. The
18 City has requested a couple of times modification of
19 the permit, and specifically modification of the
20 monitoring program. And the City did not get any
21 response contact from TDEC.

22 There have been multiple requests in the past.
23 I believe there's also a copy of the historical City
24 responses. One document says City Responses. It shows
25 the actions that the City took. One of them is

1 requesting the modification. One sheet, it's a single
2 sheet that lists all the actions done by the City. So
3 the City had tried to request for modification of the
4 permit, because, as you know, the permit was issued in
5 '96.

6 And there has been some changes in the way we
7 see things nowadays when they were in the early '90s,
8 when the permit was written. So the City has
9 approached the State for modification, and the local
10 field office gave us a verbal approval to go ahead with
11 our proposed monitoring modification, but we never got
12 any written documentation.

13 So at one time the field office, like in the
14 last year, we met with them twice to submit to them the
15 revised monitoring program that Rebecca, one of my
16 staff, will be going over it.

17 At one time the State said, for example, on wet
18 weather sampling, the permit required that we do field
19 screening, measure the outfalls, the runoff from the
20 outfalls. So the outfalls are required in the permit,
21 and the City felt that there is no need to do outfalls;
22 we need to do in-stream sampling.

23 So this was our proposed changes, and we got
24 verbal approval from the field office to do it.

25 Actually, when we saw the inspection report, they said

1 we did not do that part. This was done during the
2 permit applicable in the early '90s, but over time the
3 staff felt there's no need to sample all those
4 parameters, so we felt like we need to scale on this
5 part of the permit.

6 We were comparing ourselves to other
7 municipalities, like Knoxville, who have a new permit.
8 They don't have much on that specific monitoring
9 requirements.

10 MR. MOEGLING: One of the comments on the Blue
11 Ribbon Committee from Dr. Urban was, because of the
12 problems with sampling, that all the data was suspect
13 or not acceptable. That seems like a stretch to me.
14 If you had some samples, perhaps, where they said the
15 calibration wasn't up to date or the procedure was
16 involved, but surely that's not all.

17 MR. MINKARA: Right. There are a few
18 instances, anywhere you go, inspect the facility, you
19 are going to find some lack of some quality control.
20 So there are instances where the staff maybe may have
21 not calibrated instruments properly. I'll let Rebecca
22 Robinson go over the modeling program. After we go
23 over this, we can ask her other questions.
24 Rebecca, you want to give a presentation on the
25 monitoring program?

1 Rebecca Robinson is our water quality
2 supervisor. Until recently she was responsible for the
3 whole program, actually, under me. She had to deal
4 with the old part of the program. As you know, we
5 recently hired Don Green, who is now responsible for
6 inspections, and Rebecca is responsible for monitoring.

7 So this has freed Rebecca extensively so she
8 has more time to review the lab reports and to review
9 field work.

10 MS. ROBINSON: We received a copy of the
11 compliance evaluation inspection report dated June 22,
12 I believe, of 2009.

13 In response to that, the City of Chattanooga
14 water quality program began to evaluate the monitoring
15 aspect of the program. We will go through each of the
16 core elements within the compliance evaluation
17 inspection report and address item by item the issues
18 that were specifically put forth. One of the issues,
19 or at least as far as probable answers, most of the
20 compliance items that were addressed regarding
21 monitoring can be found in your folder. It is the
22 revised comprehensive monitoring plan. Each of you
23 should have a copy of that.

24 Basically what we did, we went through each and
25 every item that was addressed within the compliance

1 evaluation inspection report and compared that with our
2 NPDES permit and the permit application that was
3 originally submitted back in 1993, I believe.

4 And addressed each of the various items that
5 was brought forth in the document. In terms of QA/QC
6 monitoring compliance issues, if you flip through the
7 proposed monitoring plan, some of the issues that were
8 brought forth within the compliance evaluation report
9 essentially involved things like wanting to know the
10 preservative that was listed in the bottles. Or wanted
11 to know the handling procedures for the sampling, in
12 terms of, is it in a cooler? Is it, whatever, holding
13 time? If the samples are composite or grab samples?

14 Historically, it was one of those things that
15 was somewhat assumed by, you know, in the field, you
16 think certain type of sampling procedures are done the
17 way they're done because that's the protocol. But we
18 went through and actually spelled out specific, which
19 is how often are we sampling it, specific cooler
20 procedures, in terms of washing them and cleaning them
21 and drying them.

22 we also addressed issues with quality
23 assurance/quality control. Because if you go to the
24 document, at least as far as the monitoring section
25 goes, all activities go through strict peer review

1 process, in which before data is ever entered in
2 anything in the field, it is reviewed for consistency.
3 It is reviewed for accuracy. It's made sure that all
4 information is properly noted and clearly written so
5 that there's no confusion with handwriting.

6 We went through and verified that every item
7 that is listed on our field sheets are items that were
8 specifically addressed, like the name of the samplers,
9 weather conditions, time that storm events occurred,
10 times that storm events end. We keep track of all that
11 documentation.

12 We have a tracking system for our instruments.
13 We have a QA/QC sheet for all our instruments that,
14 basically, when you come back into the office, you have
15 to make sure that your instrument has passed a drift
16 check. And actually note it, so I'm getting everybody
17 to sign it and initial and document that the equipment
18 has been passed, what its supposed to do.

19 We have routine meetings to go over all the
20 forms and make sure that the staff is looking at the
21 same and interpreting the same stuff so that they fill
22 out the forms uniformly. And, again, that's something
23 that's picked up through the review process, because
24 we're going through a very stringent review process
25 from all field work.

1 Like Dr. Minkara had mentioned, some of the
2 items addressed regarding QA/QC involved items that
3 were outside our authority, like the chain of custody
4 forms, for example. We contract our sampling to either
5 Moccasin Bend Wastewater Treatment Authority or
6 Analytical Laboratories. We use their chain of custody
7 forms.

8 well, as a result, we are pretty much limited
9 by what information they put on those forms. Since the
10 inspection, however, we have coordinated with a
11 laboratory, and we have actually modified the forms to
12 address the issues that were specifically brought out
13 within the compliance evaluation inspection report.

14 Are there any questions?

15 MR. JACKSON: If I may, how often is the water
16 in these streams and the creeks checked? How often do
17 you inspect those creeks? Those are problems that when
18 this order was issued out in 1996, re-signed by
19 President Clinton in 1996, that these things should
20 happen here. I was wondering if you got the
21 information back then, any time during that year of
22 1996, and did you all tie in with TDEC to find out for
23 water and soil conservation, if any of that existed?

24 Because I talked with water and soil
25 conservation, and they said, No, they don't do testing.

1 who tests the water and little tributaries that we have
2 that runs to the creek and runs to the river and how
3 often?

4 MS. ROBINSON: To answer your question, yes, we
5 sample the creeks every year.

6 MR. JACKSON: Okay. That's one thing that we
7 discussed in Washington, that these things should be
8 done annually, should be done at least once per day or
9 twice a day, depending on the heavy industrial areas,
10 because that's where we receive a lot of these
11 pollution problems.

12 MS. ROBINSON: The way we have it set up now --
13 historically, what we had done in the past -- I don't
14 know how important it is to talk in there -- but
15 historically, what we have done in the past, is we have
16 certain watersheds, like Pitts Branch creek, Dobbs
17 Branch, parts of Chattanooga Creek.

18 Friar's Branch, where we would do an extensive
19 sampling, where we could go and sample, like, five
20 samples within a year to get a geometric mean value to
21 actually gauge how effective some of the programs --
22 like the SLAP program that we had, when we implemented
23 it, gauged the effectiveness of that program.

24 Now, I wasn't here in the '90s, so I can't
25 speak for exactly everything that they did back in the

1 '90s. I know that they contracted with UTC to do some
2 analysis on the creeks and the streams. And I also
3 know that they contracted with somebody else. And they
4 looked -- that's how they did some of the modeling
5 stuff, originally was off of NURP data and things UTC
6 collected, and things like that, back in the '90s, when
7 they did the original application.

8 Since then we have done a more watershed-based
9 approach, where we've focused almost exclusively on a
10 particular watershed at the time. And we did a more
11 extensive analysis of the water in that watershed. We
12 start out with Citico Creek, basically because the data
13 collected from the UTC study indicated Citico Creek has
14 one of the highest concentrations of E. coli in the
15 entire city.

16 So what we did, first what we did, intensive
17 sampling to try and get it posted, because we worked
18 with TDOT -- or TDEC at the time. Because, let's face
19 it, Citico Creek runs through a neighborhood, a school,
20 a park. It was one of the areas, from master planning
21 and strategic planning, you need to focus in on, just
22 because people are going to be exposed to it more.

23 Since then we've implemented the sewer line
24 assessment program, SLAP program, we did the smoke
25 testing. We've gone out and done optimal brightener

1 testing in Citico Creek watershed. And we've actually
2 seen some results from our efforts. We're actually
3 beginning to see water quality improve within that
4 watershed.

5 We went from there to Dobbs Branch. That was
6 the next section. We're actively -- in fact, we just
7 got through sampling a few months ago. We did the five
8 samples in 30 days at Dobbs Branch. And we pulled,
9 like, 15 samples at 15 different spots along the Dobbs
10 Branch watershed for E. coli and TSS.

11 We are also, especially with our revised
12 monitoring plan, we are also pulling samples from our
13 automatic samplers there at Dobbs Branch by the Bi-Lo
14 on Hickory and 23rd Street. We pull samples from that.
15 We do ambient samples from that stream, once a year
16 from that station. We've also done wet weather
17 samples.

18 And the analysis that we do on that includes
19 everything. We're doing E. coli, we're doing metals,
20 we're doing a lot of organic compounds, we're doing
21 semiorganic compounds. We're doing the full sweep.
22 And we're doing it both at a dry level, so we know what
23 the baseline is, and we're doing wet weather stuff.

24 We're also sampling other creeks. We're
25 sampling Friar's Branch, we're sampling Black Creek,

1 we're sampling South Chickamauga Creek, and we're doing
2 the same thing there. We're going through and we're --

3 MR. JACKSON: What about the tributaries we
4 have?

5 MS. ROBINSON: We're walking the tributaries,
6 every stream segment, including little tiny
7 tributaries. When we're out walking, if we see
8 anything that looks like an illicit discharge, we're
9 taking samples of it, documenting it, and following up
10 on trying to find the source on whatever we find.

11 We've also done -- one of the things we
12 proposed in our revised monitoring plan, to address
13 some of the issues that TDEC had brought out about the
14 concerns of the outfalls and the field stream of the
15 outfalls. We went back to the original permit
16 application, and in the original permit application,
17 there was a grid system, where they lay the grid out
18 over the city and randomly picked spots to check.

19 90 percent of those are flowing streams. And
20 what we're picking up on that is -- we've actually been
21 able to find more illicit discharges by just randomly
22 finding a point in a creek and sampling that. So, yes,
23 we are, and we're doing that all over the city.

24 MR. JACKSON: Okay. Under one federal mandate
25 we had, where they were doing daily testing of the

1 water. And that way they would come up with more of
2 what was in the water, because there's a big change in
3 areas, especially when it rains. Because you don't
4 check the underground, you don't have underground
5 monitoring wells throughout these little areas, so
6 there's a big change in what we see, what goes to the
7 river and to the creeks.

8 MR. MOEGLING: That's all right. Go right
9 ahead. I want for Carolyn, I'm sure she knows, to
10 recognize Mel Jackson, on our board before. As you can
11 see, we appreciate your input, Mel.

12 MR. SIKES: May I ask a question? The
13 monitoring, if you would, correct me if I'm wrong, the
14 monitoring is based on whether the water body is
15 considered to be impaired or to what degree it's
16 impaired or degree of testing, would it not be
17 associated with how impaired it is? Whereas, if it's
18 impaired, may have more daily load restrictions on it
19 and have to test it more frequently?

20 MS. ROBINSON: Well, in the future permit,
21 you're right. But we're working on the permit that was
22 originally issued back in the 1990s. And they didn't
23 even have TMDLs. That wasn't even on the radar screen
24 for that.

25 So with the monitoring plan we have, the

1 revised one, the frequency of the sampling associated
2 with that is in response to the items that were
3 specifically addressed in our current NPDES permit.
4 But if we ever do get another, it will most like be in
5 that.

6 And, yes, you're right. It will probably go
7 with the current NPDES permit. And that's where Mo
8 alluded to the fact that we historically had been --
9 had verbal about in-stream sampling versus outfall
10 sampling. So what we had done in the past was more
11 in-stream sampling, and now they're requesting more
12 outfall, which is more reflective of what the original
13 permit indicated.

14 So hopefully in the future most of the sampling
15 will involve in-stream and backtracking like that,
16 which is associated with the TMDLs waste load
17 allocation stuff, and we can start utilizing our
18 automatic samplers that are fixed in the streams right
19 now, but we have to stick with the stuff that was
20 written in the original permit.

21 MR. SIKES: Thank you.

22 MR. PATEL: I have a question. Have you
23 reviewed this with the State yet, and have they blessed
24 it?

25 MS. ROBINSON: This is the third revision that

1 we've submitted to the State. We reviewed the first
2 revision with the State, and everything that TDEC had
3 mentioned that they didn't like or they needed a
4 clarification on from the first two revisions are
5 addressed in that.

6 so we haven't heard back as of when we
7 submitted it lately, but this document addresses all
8 the specific items that were brought to the City's
9 attention through various conversations. We had a
10 meeting with TDEC. And this is some of the items that
11 they were concerned about that we've gone through.

12 And if you look, there is a table of revisions
13 in the front. And essentially that goes through the
14 items that we had addressed from the very first,
15 because our very first monitoring plan came out shortly
16 after the compliance evaluation inspection report. It
17 actually came out in June.

18 MR. PATEL: Okay.

19 MS. ROBINSON: Excuse me, July. It came out in
20 July. So the initial monitoring plan was strictly a --
21 I don't want to say a reaction, but it was an effort to
22 show TDEC that we take their comments seriously and
23 we're taking immediate action, and we're moving forward
24 on their recommendations.

25 MR. PATEL: I just have one suggestion. When

1 they approve it, tell them to give it to you in
2 writing. If they don't give it to you in writing, you
3 write back to them and say, okay, on such and such day
4 we spoke and you approved the plan, and this is the
5 documentation. We don't want to get into an argument
6 that they approved it and submit the data, and they say
7 we did not approve.

8 MR. MOEGLING: Something like the verbal
9 approval we had that Mo started out with. That's
10 exactly my thought. Verbal approval may not be
11 remembered.

12 MR. WALLIS: I have a question. All these
13 systems you've put into place, are these to do remedial
14 work or are they set up to be a long-term system for
15 monitoring?

16 MS. ROBINSON: Which systems are you referring
17 to?

18 MR. WALLIS: All this testing and that sort of
19 thing.

20 MS. ROBINSON: That's going to be long term
21 most likely. Even if you look at other municipalities,
22 there's going to be monitoring long term. It's just a
23 matter of, is it outfall monitoring or is it in-stream
24 monitoring? Again, that has to do with the discretion
25 of TDEC in their new permit, if they want -- if they

1 prefer one type over another.

2 We're always going to have -- we may have fewer
3 analytes that we have to analyze for in the next
4 permit. But we basically -- I have to be able to --
5 that's one of the things in the negotiation phase.

6 MR. MOEGLING: I have a question back on the
7 findings that they had. For instance, on the ambient
8 monitoring, what came out in that report shows samples,
9 for instance. And, obviously, you were sampling for E.
10 coli. Everything else says no. That doesn't make
11 sense to me why that's a problem, or maybe I'm reading
12 it wrong. When you went out to do a sample, if you
13 just do E. coli, that's reason to say yes, and the rest
14 of the constituents say no, or we just weren't doing
15 it?

16 MS. ROBINSON: That was -- since the compliance
17 inspection report has come out, we actually had
18 face-to-face contact with TDOT -- excuse me, TDEC. And
19 that was one of the items that was brought out.

20 We've actually totally revamped our ambient
21 monitoring program. We no longer do it the way we used
22 to do it. For example, we used to do it at ten
23 locations in receiving streams around the city. Since
24 our compliance evaluation inspection report and our
25 negotiation or discussion with TDEC, what we've done is

1 we limited the number down to five stations, and they
2 are coming from our automatic sampler stations. So the
3 way that the ambient program was, versus the way the
4 ambient program is, today is 100 percent opposite.

5 The ambient program, historically, was
6 something that was inherited. And I'm under the
7 impression that it goes back to some of the verbal
8 agreements that took place later about sampling in the
9 stream, versus sampling some other way.

10 And I'm assuming that it's because of the fact
11 that when the data was done, collected during the
12 permit application, so many of the analytes were
13 nondetect, you know, it was a cost thing, where they
14 may have said that it was nondetect, so they didn't
15 need to pull the samples. I'm afraid I can't really
16 give you a straight answer on that. I can only tell
17 you what we're doing from this point forward.

18 MR. TATE: From this point forward. In other
19 words, do an ambient sample, they give an example here,
20 E. coli was the only thing that they sampled for?

21 MS. ROBINSON: Yes.

22 MR. TATE: So now when you do the ambient
23 sample again, you're going to get all the constituents?

24 MS. ROBINSON: Yes, sir. In fact, if you flip
25 through your monitoring plan, pretty much everything

1 that we sample for now, with exception of TMDL
2 monitoring, is picking up all the constituents in
3 Table 1. So everything we do now automatically picks
4 those out. And we're actually doing flow-to-weight
5 composites and grab samples, so we've actually enhanced
6 the program completely.

7 MR. MOEGLING: Maybe you don't ask this, the
8 first thought, how much additional expense does this
9 put on your extra people and extra sampling, so on and
10 so on, eventually coming down the pike?

11 MR. MINKARA: I did do that cost analysis a
12 couple weeks back, and there's additional 50 percent
13 cost in the sampling, and we've added seven more staff
14 to cover, you know, the permit inspection and
15 monitoring requirement. I would say 50 percent
16 additional cost.

17 MR. MOEGLING: The next question for me, Mo, is
18 this included in what we show for this rate that we
19 have now or is this going to take additional money?

20 MR. MINKARA: Remember, the rate also covers
21 capital projects, so we're talking operating projects,
22 additional cost, and I'll let Mr. Norris go over the
23 rates, numbers.

24 MR. MOEGLING: Let me ask a question that's
25 purely practical. We're talking about a lot of tables

1 and samples. This Table 4 that says during wet weather
2 we'll monitor three storms during a five-year period.
3 where? I want to try to understand what happens. It
4 rains very heavily here, and there's a storm, and
5 somebody somewhere decides this is an event after which
6 we have to go sample. Who makes that decision?

7 MS. ROBINSON: I make that decision.

8 MR. MOEGLING: So do you have a list of places
9 where you're going to go next, next time we have a
10 storm, we're going to this monitoring station?

11 MS. ROBINSON: Yes, sir. The actual monitoring
12 stations are included in your document. They're the
13 ones that are listed on Page 12. They're the ones that
14 are broken down by land use. And we have copies of
15 coordinates. And it shows the drainage area and the
16 various land use applications within those drainage
17 areas and the watersheds, because that was one of the
18 things that TDEC needed clarification on involving
19 receiving streams.

20 But to answer your question, yes, we have a
21 master calendar. And what we do, we break everything
22 we need to accomplish within that permit year into
23 defined segments. So, for example, every quarter we do
24 an industrial outfall sample, wet weather outfall
25 sample.

1 MR. MOEGLING: And industrial outfall sample?

2 MS. ROBINSON: Yes, sir.

3 MR. MOEGLING: Where would that be?

4 MS. ROBINSON: We have a list of industries
5 that we identified, due to inspection records or they
6 had a past release on the site.

7 MR. MOEGLING: We're talking about hundreds, if
8 not thousands, of potential sites.

9 MS. ROBINSON: Yes, sir. But we have hierarchy
10 and we -- we identified the industries that we're going
11 to sample within that permit year. Say in August,
12 September, right before our permit year starts.

13 So we go ahead and we decide which quarter
14 which industry is going to be sampled. So we do our
15 industrial samples. We have municipal samples we are
16 now sampling. We pulled samples from citywide services
17 last quarter. This quarter we're going to be sampling
18 Summit Landfill. The following quarter we're going to
19 be sampling Birchwood Landfill, the last quarter we're
20 going to be sampling Moccasin Bend Waste Water
21 Treatment Authority. Everybody already knows that.
22 It's on the calendar.

23 For our outfall wet weather sampling, we have a
24 meeting, strategic meeting, right before the sampling
25 event, to make sure our equipment is calibrated,

1 cleaned, operational, the batteries are charged,
2 everything is ready, our coolers are clean, we have
3 enough bottles, we have chain-of-custody forms all
4 ready for each sampling set.

5 I assign sampling teams for whichever outfall
6 they're going to. Are they going to the residential
7 outfall? Commercial outfall? Et cetera.

8 MR. MOEGLING: The residential outfall, there
9 are hundreds, if not thousands, of residential
10 outfalls?

11 MS. ROBINSON: We actually identified the ones
12 we are going to sample. And these are the ones
13 included in your map, with the coordinates, the
14 drainage area, the photos, the receiving streams.
15 Those are our designated, we will sample these
16 particular land use outfalls. And those are the ones
17 that we go to.

18 And they know, because we've -- just in fact
19 last week we sampled three of them. And our next time
20 is going to be two more in an industry. They already
21 know. It's on the board, on the calendar, the
22 equipment is ready.

23 MR. MOEGLING: That "they" know, is that the
24 industry or the people doing the sampling?

25 MS. ROBINSON: No. That's my sampling team.

1 MR. PATEL: The industry doesn't know it?

2 MR. MOEGLING: One more question. These
3 automated sampling devices that are in the creek --

4 MS. ROBINSON: Uh-huh.

5 MR. MOEGLING: -- not every one?

6 MS. ROBINSON: No, sir.

7 MR. MOEGLING: How big are they?

8 MS. ROBINSON: We actually have a picture of
9 those; they're in here.

10 MR. MOEGLING: My question is going to go to,
11 when the water is up like it is right now or higher
12 than it is right now, are they in any danger of getting
13 washed away?

14 MS. ROBINSON: No, they are not. We have made
15 sure that they are all above the flood stage and the
16 floodway, and they are all nice and safe. And some of
17 them are perched several feet in the air so that they
18 will not be flooded unless there is like a huge --

19 MR. MOEGLING: Do they send it in on a regular
20 interval? Do they send it in electronically? Or do
21 you have to go out there and collect the information?

22 MS. ROBINSON: We can download the information
23 remotely. We have to go out in the field and collect
24 the sample, actually pull the sample off.

25 MR. MOEGLING: So could they do what Mel was

1 talking about, sample every day right here?

2 MS. ROBINSON: They could. In fact, we gather
3 certain amounts every day. We gather flow
4 measurements, rainfall data; all that, we have records
5 from every day.

6 MR. MOEGLING: So are we establishing a
7 baseline for these major creeks?

8 MS. ROBINSON: I could see how we could be for
9 hydrology. We're not testing any parameters as of
10 right now.

11 MR. STEIN: When I first got on this forum, I
12 think I suggested, if I didn't suggest it in here
13 publicly, I suggested it privately, the way to really
14 get a measure on how we're doing as a city, is to put a
15 monitoring device in the Tennessee River upstream, of
16 which not one drop of water in the city limits gets
17 into the river, and put another monitoring device on
18 the Tennessee River downstream, in which not a drop of
19 water falls in the city of Chattanooga and gets in the
20 Tennessee River, and measure the difference in those
21 two, and that tells you how you're doing.

22 And maybe that's impractical because the
23 Tennessee River is too big or it's too dilute. Why do
24 we not have a monitoring device in the river?

25 MR. SIKES: A lot of the background sampling is

1 done that way. I know with suspended solids and stuff
2 like that, this is how you measure it. You measure
3 what comes on to a given area and then you measure what
4 goes out, so that you can take a difference of whether
5 the MTUS for a light meter or something like that,
6 through turbidity or whatever. That's how -- I know
7 TDEC gauges suspended solid in a water body or water on
8 a specific project.

9 MR. STEIN: And you might be able to say, what
10 I'm talking about, this is the impact of the city of
11 Chattanooga on the water quality of the Tennessee
12 River, which is where all our water goes, right? So is
13 that something that's been considered?

14 MR. MINKARA: Actually, TDEC and TVA is
15 responsible for the river. We're only responsible to
16 meet the permit requirement and then the TMDLs. Most
17 of you know what the TMDLs are. They were issued a
18 couple of years ago, and these are additional
19 requirements. And the TMDLs are to remove additional
20 loadings, pollutant loadings, into the local creeks and
21 streams. And that's how you gauge the progress.

22 For example, in Citico Creek Watershed, is
23 fully contained in the city, so we do a sampling and
24 test sampling at Citico Creek Watershed. We take
25 samples and we do any corrective action plan, the SLAP

1 program, and so we're removing such pollutants from the
2 streams through such projects.

3 This way we have to sample different solids,
4 sample different locations so you know where the
5 sources are. So if you're doing, like you're saying,
6 at the highest point and lowest point, you probably
7 don't know where the sources are.

8 MR. STEIN: I'm not suggesting that we do only
9 that. What I'm suggesting -- I don't know how
10 expensive these things are, but assuming one at the top
11 and one at the bottom wouldn't be too expensive, but
12 that would be a way to gauge the overall success of the
13 program.

14 MR. PAYNE: Bill Payne, City engineer.

15 Another thought that comes to mind is it's not
16 just Chattanooga. For example, if you put in one, you
17 would have to monitor everything that comes into the
18 City all the way around. Because if you went
19 downstream on the Tennessee River, you're also picking
20 up --

21 MR. STEIN: Some of it.

22 MR. PAYNE: Well, 200 square miles of North
23 Georgia just in the South Chickamauga Creek watershed.
24 That's all North Georgia, which is larger than the
25 entire city of Chattanooga. So I would not want to

1 gauge the health of our program strictly on that.
2 Because there's agricultural fertilizers and other
3 things that might be used that washed down.

4 MR. STEIN: That would go to Lookout Creek,
5 wouldn't they?

6 MR. PAYNE: Whether it's Lookout Creek or
7 Chattanooga Creek, any of those that have those
8 agricultural uses. Yes, it could be done, but you
9 would have to have a comprehensive plan that identified
10 all the places where those sources come in and take
11 some composite of that.

12 I think that would be the other primary concern
13 I would have about that, plus we also have to be
14 careful, once you start to do something that is not in
15 the permit, then they expect you to do it, and they'll
16 put it in your next permit. I would also want to be
17 careful about not doing something extra when we're
18 still trying to do what they already want us to do.

19 MS. STEIN: Right. My thinking, what my
20 motivation is in asking these questions is trying to
21 figure out some way to get in front of TDEC and the EPA
22 when doing this, so that we can lead them a little bit,
23 rather than trying to react to what they're telling us
24 to do.

25 MR. PAYNE: Right.

1 MR. STEIN: The City of Chattanooga has done a
2 great job of remaking itself as an environmental city.
3 That would be part of that. But it seems to me, in
4 what I'm reading here, that we're -- one of the things
5 that we're having to do, as a governmental body, is
6 react to this regulation, which seems to be changing
7 all the time. So I'm trying to figure out some way to
8 get in front of them, instead of being behind them all
9 the time. That's all.

10 MR. PAYNE: May be something to consider.

11 MR. WALLIS: Along these lines, is there a
12 baseline that everyone agrees to when water, however
13 you measure it, has this quality, that it's acceptable,
14 or is this something that changes?

15 MR. PAYNE: We had agreement, I guess,
16 ourselves, that we are not aware, that there is no
17 numeric limit for -- either for our permit or for other
18 nonpoint sources. Typically the only real gauge there
19 for a stream would be the list of impaired waters,
20 which is the 303(D) list from the State. That's
21 probably the closest thing you can come up with.
22 Doesn't tell you whether you're achieving or not, but
23 just whether it's suitable for different uses.

24 MR. WALLIS: Any time you put the City in
25 compliance, every permit can raise the bar.

1 MR. PAYNE: That does seem to be the trend for
2 municipal permits and other sorts of permits across the
3 board. Currently the standard is called maximum,
4 instead of practicable, which basically means it's open
5 to different interpretations. Some people interpret it
6 as spend as much money as it takes to remove it all;
7 other people say you should use the highest available
8 technology. Other people say you should use the best
9 cost-effective technology. Basically as the permits
10 come out, they do raise that bar, and I think they are
11 pushing people to rise to the EBP standard.

12 MR. MOEGLING: Thank you very much. I
13 appreciate that. Did anyone else have any other
14 questions on the sampling? Identify yourself.

15 MS. MAYES: My name is Caroline Mayes. I live
16 at 1030 Lower Mill Road up in Hixson. I've heard all
17 about sampling, but I've not heard anything about how
18 you're going to clean this up, not one word. You can
19 sample all day long and make these booklets and make
20 tables, but you're not cleaning it up. It's just
21 trickling down the Tennessee River. And now we have
22 fly ash coming from the Kingston Coal Plant that's
23 probably already down here in the river.

24 So you're doing all these studies. I don't
25 hear one thing done to clean it up. Sample all day

1 long. Do it -- and I agree with him, once a year is
2 not enough. But you're not doing anything about it
3 except making samples and records and charging me on my
4 taxes.

5 MR. MOEGLING: Any comment?

6 MR. STEIN: Mo, would you like to address that?

7 MR. MINKARA: Sure.

8 Actually one of the permit's requirement is
9 removing illicit discharges, so we do act when we see
10 any illicit discharges. We also started, since we had
11 the previous order, we started a sanitary service line
12 program where we go in and we remove potential
13 discharges from private and City sanitary service
14 lines. So we do a lot of pollutant control. This is
15 just a couple examples.

16 We also have a lot of projects, capital
17 projects we like to do. We have a lot of stream banks
18 improvement projects. We have to -- we like to do a
19 lot of portion analysis to come up with corrective
20 action plans. With additional funding, definitely
21 there will be a lot of corrective action measures
22 taken, in addition to what we already do.

23 MR. STEIN: I want to address some of what you
24 have brought up.

25 And my name is Doug Stein. I don't know you.

1 I'm a contractor here in Chattanooga.

2 Recently Rebecca, I don't know if she's still
3 here, but they found an illicit discharge from my
4 uncle's widow's house. My uncle died in 1989. And
5 they required her to go through quite an expensive fix
6 to make sure that that discharge wasn't happening. I'm
7 assuming that's happening a lot to other people. I saw
8 that happening.

9 As a contractor who disturbs the ground and
10 builds things, I've seen a lot. They're required to
11 put in what are called best management practices, which
12 are soon going to be changed by national law to
13 effluent limitation guidelines, and those sites are
14 tested. So there are measures put in place.

15 If you see on a construction site detention
16 ponds and filter socks set up on the thing, the goal
17 now, the technology has moved to the point where a
18 construction site is essentially made into an active
19 filter while it's under construction, is the idea.
20 People are required to seed disturbed land. So there
21 are a lot of activities required.

22 When they go to businesses, they're putting in
23 underground detention systems, they're requiring each
24 new construction that is permitted has to have a
25 complete plan of how they're going to handle stormwater

1 and stormwater runoff. Called a stormwater, SWPPP
2 plan, Stormwater Pollution Prevention Plan.

3 We, in this group, are so used to dealing with
4 those things, we don't spend much time talking about
5 those. But there are a lot of things that are done. I
6 know the North Market Street Branch, for example, was
7 rebuilt. That has not made North Market Street Branch
8 perfectly clean, but it's made it in a lot better
9 condition than it was before.

10 And there are projects like that going on all
11 over the city. But in order to show that those things
12 are working, this testing is required by TDEC and in
13 line with the EPA. So I appreciate your question.

14 MR. JACKSON: In my yard, I would like to know
15 about the money I'm paying for my runoff, because I
16 won't feel real safe and sure about that. Am I paying
17 anything until they tell me what is running off of my
18 yard? This is one thing that is disturbing all of
19 Chattanooga. We have to know what's going on before
20 you can impose something on anyone.

21 We know what's in the creek. We know what's in
22 the tributaries. We know what's in all these little
23 branches. But have we actually come to the point where
24 they can tell us what is running off our yards? What
25 is running into our manholes? Do they monitor for

1 manholes or stormwater drains?

2 These are things that EPA is looking at. These
3 are things that I'm looking at. And that's all over
4 the United States, this is what they're looking at.

5 Because if we don't start doing that and
6 letting people know what we're actually doing, yes,
7 they're going to be like this lady here and the rest of
8 the people in Chattanooga and around the world, around
9 the United States, they're going to come up with this
10 and say, why? why did you raise my taxes? we don't
11 know what you're doing. we don't know what's going on.

12 I said we can make little tributaries some
13 places to help handle some of the water from the creek
14 and some of the water flowing in through these various
15 areas, causing our manhole covers to overflow.

16 If we put up a lagoon someplace, in some area
17 that's clear, that don't have anything there to catch
18 some of this water, that would reduce the overflow in
19 our creeks and little tributaries. we won't have water
20 like on 23rd Street coming out of the manhole covers if
21 we take care of that problem over there. If they got
22 to excavate some more dirt out of there, go ahead and
23 do it.

24 what are we doing with the money? what are we
25 doing with the money? Are we sitting on it? Or are we

1 going to take and use it so people can see, people can
2 feel safe in the city without going through all the
3 storm and flooding in these areas. These are questions
4 that are being asked. And I'm asking them, too, asking
5 the question, too.

6 Are we going to permit this? Are we going to
7 really get out and study this? City council said, Yes,
8 we'll charge this, we'll charge the price, but they
9 raised it up, we'll go ahead with it. But have they
10 actually came and sat down and say, what we need to do,
11 because as far as a lot of things, and when we wrote up
12 environmental justice law for the State of Tennessee, I
13 gave Bill a copy. I give Bill the book to run copies
14 off of that.

15 We include farms, farming land, where they have
16 cattle, and all these things were included in that.
17 These are things that we go by. These are things that
18 EPA want to know, TDOT want to know. What are we
19 doing? Are we just paddling our wheels? Let's be true
20 to the city.

21 These businesses in Chattanooga, how can they
22 pay when they're not making the money? The churches?
23 Do we know what's running across the yards there? Do
24 we know?

25 MR. STEIN: The only way I think, and you guys

1 correct me if -- I'm an English major and a contractor,
2 not an engineer. And I don't know that I'm the one to
3 answer all these questions, but I think that the point
4 of TDEC directing that these things be monitored and we
5 have monitoring sites, the way you identify those
6 things, would be working backward.

7 It would be an impossible task to test the
8 runoff on each individual parcel of land so you could
9 tell each homeowner what is coming off your property.
10 You got to work backwards and identify it that way.
11 Because the bulk of the problem can be identified,
12 generally, as the point source. Not something general.

13 You might identify a farm as a source of E.
14 coli and the livestock going into the stream or
15 something like that. But you start downstream and work
16 upstream; you can't start downstream and work upstream,
17 because you'll not find out anything. So that's what
18 this is going to do.

19 What scares me a little bit about this is: The
20 issue may be larger than we are willing to pay to find
21 out. You know, the taxes and the stormwater fees get
22 assessed across these pieces of property in much the
23 same way that property taxes pay for education. Even
24 though a lot of people don't have kids in school, they
25 still pay their property taxes. And that's sort of a

1 shared burden of the society.

2 There's no attempt, I don't believe, nor can
3 there be, an attempt to have the people that are
4 actually responsible -- you know, you go and identify
5 them and say you're the one that has to pay to clean
6 this up, you go try to identify that source and say
7 you're the one that has to do this to clean it up, but
8 the taxes are levied across the board. And residences,
9 as I understand it, are taking much less of the burden
10 than our businesses.

11 MR. JACKSON: Just like when I was with
12 Federal, we had -- EPA would come out and check the
13 creek four times per day to see if they have benzene,
14 toluene, lead, or whatever we used or oil been dumped
15 in the creek. Yes, we had a spill once. They was on
16 top of it. We had sent a crew out there to clean this
17 oil up. If not, we would have been fined. We would
18 have been fined, heavily fined.

19 MR. MOEGLING: I think that's still true. With
20 Rebecca, with her monitoring, if you find a problem,
21 you trace it back to the source. As Doug has said,
22 starting from each individual piece of property and
23 trying to find out what's coming from each individual
24 property is beyond the expense that we can bear.

25 Doing the sampling at however gross you want to

1 start and then as you find a problem, you chase it back
2 upstream to the source, then you go to that person, as
3 you said, if you have a spill, Rebecca's sampling
4 should catch that, and you trace back to the source,
5 and say, Hey, you had a spill and you clean it up.

6 MR. JACKSON: We would get an invoice -- you
7 get an invoice from each company stating what you use,
8 every chemical, whatever you use there to make a
9 product.

10 MR. MOEGLING: The system, as Doug says, you
11 can't possibly check every small piece of ground, so
12 you can start the sampling, if you have a problem, you
13 trace it back to the source.

14 I think that's what we're doing.

15 MR. PAYNE: Right. And probably just to add to
16 that, for example, Mr. Jackson has mentioned industries
17 and what chemicals they use. There is a completely
18 different monitoring plan, inspection program, sampling
19 program that concerns industrial inspections. So when
20 we've talked about all the things we've talked so far
21 with monitoring, those are very specific portions of
22 the permit, but they do not cover necessarily -- we've
23 not attempted to cover the entire permit or every
24 portion of the sampling. We've covered one specific
25 area.

1 Industrial sampling and industrial monitoring
2 and industrial inspections fall into a different area
3 of the permit. They have their own protocols. We
4 perform industrial inspections on a completely
5 different basis. I think there are a lot of different
6 things. Currently our level of service that we're
7 talking about providing for the sampling, like
8 Mr. Jackson's talking about, multiple times a day in
9 some of these areas is beyond what we're currently
10 required to do and currently able to pay for.

11 Those things can be tested on that basis, but
12 every time you run a test, you have to pay for that
13 cost of that test. That, right now, is beyond the
14 scope of the regulations and something that is not
15 included in what we are proposing right now.

16 I don't disagree that in some cases it might be
17 nice to have that information to know. It's currently
18 not a requirement. At this point we are focused on
19 what's required.

20 MR. MOEGLING: Those major industries have
21 their own permits. They're required to do their own
22 sampling and recordkeeping and submitting.

23 What you're doing is pretty much an audit type
24 function. You do that how many? Once a year? So
25 you're obviously not monitoring every industry in

1 Chattanooga. They come under their own NPDES permits;
2 is that correct?

3 MR. PAYNE: Right. There are, again, certain
4 numbers that get looked at and inspected on a certain
5 frequency basis. We can talk more about that if the
6 Board wants to proceed. I won't pretend to be fully
7 familiar with all the industrial.

8 MR. MOEGLING: The industrial, what you're
9 doing, is pretty much a backup of the requirements that
10 they have straight to the State.

11 MR. PAYNE: Very similar to what the State is
12 doing to us, they come in and inspect certain portions
13 of our program. Every year we go to certain industries
14 and inspect certain industries for certain things.

15 MR. PATEL: I might add industry has more
16 stringent requirements than some of the cities have, in
17 terms of number of samples to be drawn, how often do
18 you do it, and how many things you analyze for. It's
19 laid out in the permit and has to be reported to the
20 State. And State records are open to everybody.

21 MR. MOEGLING: That's specific to the type of
22 industry that a chemical plant -- versus a steel plant
23 or something. Those permits are specific to that
24 specific function.

25 MR. PATEL: That's right.

1 MR. MOEGLING: Okay. Any other questions or
2 comments?

3 Mo, you have some more for us?

4 MR. MINKARA: We can go to the next item on the
5 agenda, if you would like.

6 MR. MOEGLING: Before we go on, you gave us a
7 list of the things that have been completed. I look at
8 that from our evaluation from TDEC and EPA. It looks
9 like an awful lot of this has been completed. I read
10 what you have here. It looks like we've made major
11 steps in addressing the problems they had.

12 MR. MINKARA: Right. As you can see from this
13 piece of paper, it's describe our corrective action
14 plan. It was submitted to the State. We, yet, have
15 not gotten a response whether they approved it or not.
16 So we are assuming that they are still reviewing it.
17 We can't just stop until they give us the approval.

18 We have started implementing our corrective
19 action plan. And the items in the red that say "yes,"
20 are the ones that we believe we have completed or
21 implemented fully. These are mainly updating our
22 standard operating procedures and revising our
23 monitoring plan and doing some improvement in some of
24 the municipal facilities.

25 So it's merely updating documentation and

1 review process. And the full compliance, I would say
2 would come toward the end of this permit here. So by
3 July we should have all the data we need for our
4 monitoring requirements. So between July and
5 September, we should be, hopefully, fully in compliance
6 with our corrective action plan.

7 MR. MOEGLING: We were coming to the end of the
8 items that had been identified in 2004, was it? We
9 were on schedule, we understood, to finish that. So
10 what you're telling me, with these additional items,
11 should be in good shape by this year.

12 MR. MINKARA: In terms of monitoring, we should
13 be in good shape. In terms of the evaluation of the
14 as-found mapping project, this can be part of the
15 negotiation with the State whether they're -- we don't
16 know what they want us to do. We know that we can
17 already revisit the Phase 1 of the as-found. We can
18 remap this area. So this area will take more than a
19 year to complete, once we have the funding. Doesn't
20 say we have capital funding to continue the as-found
21 project.

22 So the monitoring requirement, we can -- we're
23 confident we can complete it by the end of this permit
24 here. But in terms of this capital project, without
25 capital, it's hard to commit to you or to the State

1 that we can complete other items.

2 MR. MOEGLING: Now, when you're saying
3 "capital," is that what you're waiting on for the rate
4 increase? That's the capital that we identified in
5 that?

6 MR. MINKARA: Correct, yeah. A couple of the
7 compliance items would require some capital project,
8 specifically the as-found, revisiting Phase 1 of the
9 as-found, the pilot area.

10 MR. MOEGLING: Again, I think Lee Norris ran
11 off. What impact does that have on future rates? Want
12 to get out your Ouija board?

13 MR. MINKARA: Well, it's up to the council to
14 set rates next year.

15 MR. MOEGLING: Let's assume the rates are what
16 we proposed to the Board and voted on already, and
17 we've got the Blue Ribbon Committee reviewing those.
18 Let's assume the same level of income is coming in. I
19 think the main function of this review committee, or
20 this rate review committee, is not the money is not
21 needed, it's how they're going to do it, rather than
22 through the fee or City tax ordinance.

23 MR. NORRIS: Sorry, Mr. Chairman, I got another
24 meeting to go to, but if you would quickly repeat that
25 question, I'll try to get you an answer.

1 MR. MOEGLING: What I'm trying to get to, the
2 bottom line, Lee, with what we are seeing here, is this
3 budget good?

4 MR. NORRIS: Actually, I reduced that budget
5 down to 20 million. With 20 million we can accomplish
6 what we need to do.

7 MR. MOEGLING: With the new requirements?

8 MR. NORRIS: That is correct. I've left enough
9 allowance in purchase services and materials and stuff
10 to cover the increased testing, also increased the
11 contract for testing. Yes, it's already included in
12 there.

13 MR. MOEGLING: The capital project we talked
14 about, that's all in there?

15 MR. NORRIS: The capital project is in there,
16 but I think we've got \$8 million set aside as first-
17 year capital projects, and we've got about \$16 million
18 capital projects on the books. I have a feeling,
19 depending on how this plays out, the annual capital
20 outlay may be adjusted downwards somewhat to reflect a
21 possible decrease in revenues. And that's all based on
22 what comes out of the Blue Ribbon Committee.

23 I talked to our CFO this morning briefly. We
24 can afford to do that to a small extent, if we can
25 secure financing for the capital projects moving

1 forward.

2 The most important part of this whole process
3 is your ensuring that we have a dedicated source of
4 revenue to fund this program moving forward. In other
5 words, we can't continue to move forward trying to fund
6 it, let's borrow a million here and 500,000 back here
7 and maybe we can latch it together and move forward.
8 You can't run a business without a dedicated source of
9 revenue, and that's what this is.

10 Any other questions, Mr. Chairman? I hate to
11 rush out on you.

12 MR. MOEGLING: I appreciate it. That was the
13 bottom line of everything that we have done here. I
14 understand what Mo has done and am really appreciative
15 of the response that we've had to TDEC and the EPA.
16 And everything you said, its contingent upon who you
17 talk to in your life.

18 MR. NORRIS: You're absolutely correct. Thank
19 you, Mr. Chairman.

20 MR. TATE: That \$20 million of uncollectable
21 funds or fees, is that an issue the Blue Ribbon
22 Commission will be addressing?

23 MR. MOEGLING: They have already sent to the
24 City Council that they should be aggressive on
25 collecting that money. Fortunately or unfortunately,

1 depending on where you find in the country, the two
2 major people that owe that money, at least half of it,
3 13 million, are the federal government and the state
4 government. What's your guess whether we'll collect it
5 or not?

6 Much of the other is people who have moved and
7 so on. There's a lot potentially out there to collect
8 with a five-year statute of limitations, so that other
9 12, let's say \$12 million, how much percentage of that
10 you're actually going to collect? We really don't
11 know. But that's one of the things they've addressed,
12 and City Council is moving forward, or I should say the
13 City attorney is moving forward to pursue those.

14 And we'll see how it turns out. But there's no
15 doubt that there is some money out there that has not
16 been collected, so some people have been having a free
17 ride.

18 MR. DeFOOR: Mr. Chairman, I would like to make
19 a comment. They don't understand what they have heard,
20 but they do understand when the government owes the
21 City millions of dollars, this committee is being
22 created, I think the most aggressive format to get our
23 money should be taken. If we're aggressively out here
24 collecting storm water fees, the very idea the state
25 and federal government owes us money and we're out here

1 hammering the public with these surprises that no one
2 knew was coming is egregious.

3 MR. MOEGLING: Absolutely.

4 MR. DeFOOR: If we're going to form anything,
5 let's get something with teeth in it, our attorneys go
6 after our money.

7 MR. MOEGLING: That's what the suggest -- Blue
8 Ribbon Committee did that, suggested to City Council.
9 Like I said, that was the resolution they were working
10 on.

11 Valerie, you might address that.

12 MS. MALUEG: The only thing I would like to say
13 at this point, there is a legal issue as to whether
14 this is a tax or a fee. Now, there's been an attorney
15 general opinion and there is a case that has said that
16 it's really a fee, but it has not been specifically
17 addressed with respect to whether that is exempt for
18 the various governmental entities, such as the state
19 government, federal government.

20 The tax, the Supremacy Clause of the
21 constitution, being a sovereign entity, exempt those
22 entities. If it's deemed a fee and not a tax, then it
23 would not necessarily and wouldn't exempt the state and
24 federal governments.

25 MR. DeFOOR: If it's a fee, would not exempt.

1 MS. MALUEG: Some of our sister states have
2 addressed that issue. Florida, I believe, has
3 addressed it. Some of the cities in Florida. My
4 research is not complete by any means. I have just
5 started it.

6 There are -- and the way that it's determined
7 as to whether it is a fee or a tax is very specific.
8 It considers a number of factors. And I do not
9 pretend, I don't have my research with me to make this
10 an exhaustive list, but some of factors that the courts
11 look to as a fee, is it voluntary? Is it being
12 assessed to pay for the actual stormwater facility? Is
13 it being assessed to raise revenue? And is it being
14 assessed in proportionate manner so a person is paying
15 their proportionate share of the fee or tax?

16 If it meets that criteria, the more that it's
17 voluntary, the more that it's not used to raise
18 revenue, the more that it's in proportion to what is
19 actually used, the more the courts consider it a fee.

20 MR. DeFOOR: The citizens are paying a fee.
21 It's called a stormwater fee.

22 MS. MALUEG: It is, that's correct. What I'm
23 saying is that particular statute has not been
24 challenged except for a case that was decided in, I
25 believe it was Vandergriff versus the City of

1 Chattanooga. Like I said, I don't have my research
2 with me. I think it was a district court case, wasn't
3 in the actual state court; district court case. In
4 that case, called it a fee.

5 MR. STEIN: I think it's been determined to be
6 a fee.

7 MR. DeFOOR: We are aggressively going to
8 launch that. I hate these people to walk out of here
9 more confused than when they came in.

10 MS. MALUEG: The only thing I'm trying to say,
11 and we agree, it's been determined to be a fee, but
12 it's not been challenged, we've never gone forward. We
13 get letters in, for instance, I believe we received a
14 letter from the postal service, saying they're exempt
15 as a tax, notwithstanding this case we're discussing,
16 it's nevertheless a tax. So something would have to
17 move forward legally to finally determine.

18 MR. STEIN: As I understand the issue, though,
19 Ken, if it's a tax, then these governmental bodies
20 don't owe it, churches don't owe it.

21 MR. DeFOOR: Right.

22 MR. STEIN: If it's a fee, then governmental
23 bodies and churches, people not using the system, so
24 the people right on the river, for example, perhaps,
25 Kenco's warehouses, their main office to the old Quaker

1 thing, I think it discharges directly into the river,
2 for the pipes they have installed, they have no fee.

3 MR. MOEGLING: That's correct. Here's the law
4 and particularly exempted.

5 MR. DeFOOR: That's the issue. If it was a
6 tax, they would have to pay it.

7 MR. MOEGLING: But the law specifically states
8 -- the law --

9 MS. MALUEG: The problem is --

10 MR. DeFOOR: That's exactly what I'm saying.
11 We need to get people together that legally can
12 challenge it, because these people are paying a fee. I
13 am paying a fee. And it's got teeth.

14 MR. MOEGLING: So the state and the feds
15 should have to pay, if it's a fee.

16 MR. STEIN: That's the issue that you can
17 explain to the public, I think, essentially.

18 MS. MALUEG: It has been determined to be a fee
19 in that case, but going forward, whether or not they
20 would look at that again and say perhaps it is a tax,
21 the way it's being administered.

22 MR. DeFOOR: I'm only speaking about
23 government, not big users or people already -- I'm
24 talking about the government bureaucracy that owes this
25 City money. That's what I'm -- I know there are

1 exceptions and exemptions in churches. I'm not talking
2 about that.

3 MR. MOEGLING: Now, another little thing in the
4 mix, if you want. The State didn't do us any favors in
5 the law, they put in the requirement on the bill that
6 goes to people. It says, when you put out the bill,
7 you will put this statement on it, This tax has been
8 mandated by congress.

9 MR. MOEGLING: After that, a fee is imposed.

10 MS. MALUEG: That was the distinction I was
11 trying to make. We have had a case where it says the
12 fee we have, in the state statute itself, calls it a
13 tax, and the tax is being mandated by congress, even
14 though our state statute lists it as a fee throughout
15 the body of the statute.

16 MR. STEIN: Okay. I'm glad we have good
17 attorneys to argue that case, and I hope they argue it
18 to the Supreme Court.

19 MR. MOEGLING: That's been forwarded to the
20 City council. Hopefully, we'll collect, but don't hold
21 your breath.

22 MR. PATEL: Are we taking the course as far as
23 taking the service to the court for payment.

24 MS. MALUEG: There's been a resolution passed
25 by the City Council to aggressively pursue. That's

1 where we are right now. There's not been a
2 determination made as to what, if any, lawsuits are
3 going to be filed, so I have to update you on that in
4 the future.

5 MR. MOEGLING: Okay. I think we have confused
6 everybody enough.

7 MR. WALLIS: Could I ask one more question?

8 Mo, you've done all these things and in the
9 process of doing all these things. Given that, are we
10 still in jeopardy of being fined by these government
11 entities?

12 MR. MINKARA: Yes, sir. We will be starting
13 the negotiation with the federal and state governments.
14 We're waiting to receive a letter from them to start
15 the negotiation process. And we're going to seek legal
16 assistance and technical assistance to go through this
17 process.

18 we have presented this corrective action plan
19 to them. As I've said, we haven't heard back. So we
20 can continue on the negotiation phase and may include
21 some penalty, required some capital projects and some
22 special environmental projects.

23 MR. WALLIS: None of this budgeting takes into
24 account any potential fines we have to pay?

25 MR. PAYNE: That's correct.

1 MR. MINKARA: That's correct.

2 MR. STEIN: That's been levied, right? I
3 thought it was \$50 million. It's been --

4 MR. MOEGLING: That was the original.

5 MR. STEIN: It's been levied but not assessed,
6 or whatever the language is.

7 MR. MOEGLING: That's not the latest finding.
8 That was the original. That was a potential if you
9 didn't make all your schedule.

10 MR. PAYNE: Right. But just to clarify, I
11 don't think the number is 50 million. I want to say 1-
12 or \$2 million, and it was spread out among multiple
13 milestones and legend points. At this point we had
14 paid \$50,000 up front and then done a supplemental
15 environmental project that was valued at \$100,000.
16 Those two things have been done. Everything else was
17 in the order pending that resolution, pending the end
18 of the order and determination of compliance. Now
19 we're at the point they issued their determination, and
20 they responded, and we're waiting again for them to
21 determine if they're ready to enforce or not.

22 MR. STEIN: Where did I get the \$50 million?

23 MR. PAYNE: I don't know, but I certainly hope
24 it's not that high.

25 MR. MOEGLING: That's the key, where we thought

1 we were completely on schedule and everything was
2 hunky-dorey. Okay. We've beat that one to death.

3 Next up, and before we start on this, we're
4 going to get into civil penalties for Harold Dingman.

5 This is a hearing so make sure that you come to
6 the mic, if you're going to say anything. You have to
7 sign in, have to be sworn in. And, like I said, make
8 sure you're on the mic so that we can get everything
9 that's said.

10 And I want to tell you up front this: You talk
11 to us. If you don't like what we determine, you still
12 have law in court. That's your prerogative. But
13 anybody that's here, we have three civil hearings, make
14 sure that you're signed in and make sure that you're
15 sworn in, and then you come to the mic for anything you
16 want to say. Okay?

17 MR. SWILLEY: Hello, everybody. Let me sign.
18 My name is Jeremie Swilley over at the City of
19 Chattanooga. I assessed the penalties.

20 (All witnesses were sworn in in array.)

21 MR. MOEGLING: The main thing, make sure
22 everything is recorded. It's really for your benefit
23 if you want to go beyond what we decided. Because that
24 becomes the record before the court.

25 MS. MAYES: That's fine with me, because I

1 don't give up.

2 JEREMY SWILLEY,
3 having been sworn to tell the truth, testified as
4 follows:

5 MR. SWILLEY: Yes.

6 MR. MOEGLING: Again, when you come to the mic,
7 identify yourself, because we have to identify that in
8 the minutes. Go ahead.

9 MR. SWILLEY: Once again, I'm Jeremy Swilley,
10 with the City of Chattanooga. I'm the stormwater
11 inspector for the site we're about to go over, Kenton
12 Ridge Subdivision located off Mae Dell Road.

13 To start with, the subdivision was developed,
14 completed, the permit closed, and then sometime later
15 the development of actual building of the homes inside
16 the subdivision began. I received a complaint of
17 sediment being discharged. I went to the site to take
18 a look. And you guys can see the pictures. You also
19 have a handout. It's black and white, though, so I
20 don't know if you will be able to tell much from the
21 pictures. You can see there's obvious erosion, no
22 sediment control really to speak of, vehicles entering
23 and exiting, public streets, bringing mud back out,
24 tracking, as we call it. Obvious discharges where the
25 sediment has run with the stormwater, off the site,

1 into storm drains and into other peoples' yards.

2 That was June 8. I actually issued it to the
3 wrong address, so I reissued that same written warning,
4 first offense, on the 15th of June.

5 MR. MOEGLING: Let me interrupt you. Tell me
6 where this is? Where is Mae Dell Road?

7 MR. SWILLEY: Mae Dell Road is kind of in the
8 corner of Shallowford and Lee Highway, the west side of
9 Lee Highway, down Shallowford, the new area that just
10 got widened along Shallowford Road, just finished up,
11 it's right along there.

12 MR. MOEGLING: Okay. Thank you.

13 MR. SWILLEY: Here's just a couple more
14 pictures. You can see the sediment controls that were
15 in place for the subdivision, itself, have not been
16 maintained. Some time has passed, I'm assuming around
17 a year, maybe a little more, but in any event, at this
18 time the sediment controls are not in place. Tracking
19 is ongoing. So sediment is being discharged.

20 The second offense, I came back July 13th -- I
21 would like to say something, first of all. There are
22 multiple inspections that were performed on this site.
23 I'm just going over the inspections that accrued a
24 citation.

25 I don't want to spend all day, like I did last

1 time, going over every single inspection on the site.
2 so if you have any questions, let me know.

3 MR. PATEL: Between June 9 and June 15, you
4 weren't there more than one time?

5 MR. SWILLEY: No, sir. In this event, this was
6 the very next day.

7 MR. PATEL: How many times between June 15 and
8 July 15, were you there?

9 MR. SWILLEY: June 8 was the original. June 15,
10 basically, I didn't visit the site. I received the
11 letter back with an incorrect address. And I got the
12 proper information and resent it. That's really all
13 that happened on the 15th.

14 The next time I did inspect the site was on the
15 13th. You can see some attempts have been made. I had
16 been in contact with Mae Dell Development Corporation,
17 LLC, to get some corrections made. Most of that was
18 over the phone.

19 But you can see they have tried to make some
20 corrections; however, either due to not being
21 maintained or improperly installed, we've still got
22 discharges going on. You can see the sediment fence is
23 down. And you can see the top left corner, going right
24 around the protections; they're not installed properly.
25 Poor management.

1 You still have the vehicles entering and
2 exiting, you know, public street in the disturbed area.
3 No construction entrance. Second offense was issued,
4 which, according to our protocol, requires a notice of
5 violation, which I issued on the 13th of July.

6 On September 2nd, I revisited the site. This
7 was a third offense. You can see the sediment controls
8 are still not well maintained. There's still improper
9 management tracking, no construction entrances,
10 sediment being discharged, the site is in pretty bad
11 shape. Being the third offense, I issued a notice of
12 violation, and civil penalties were assessed in the
13 amount of \$650.

14 September 21st, we had a pretty sizable rain
15 event. I visited the site and documented multiple
16 discharges. Same situation. You know, sediment
17 controls not in place, not maintained, not properly
18 installed. Construction entrance issues. Sediment,
19 obviously, being discharged. You can see the lower
20 right picture here. This is actually a yard that is
21 several hundred yards -- it's somebody's property
22 adjacent to the site, but where you're actually looking
23 is a couple hundred yards from the site.

24 It's washed the mud all the way down into these
25 people's yard, into their driveway, and into storm

1 drains. This bottom left picture, this is another
2 property adjacent to the site. You can clearly see the
3 sediment washing onto their property.

4 Top right is another property, again,
5 discharging all the way through from their driveway on
6 to public streets. Then you can see a picture of --
7 sediment control is just not maintained.

8 Here are some more pictures, still the fourth
9 offense, sediment controls not properly installed, not
10 maintained, not installed at all. Mud washing into
11 another property. And you see it washing down the
12 street. This is across Mae Dell, and I forget the name
13 of the other little street. It runs all the way down
14 it.

15 Being the fourth offense, civil penalties were
16 assessed, \$2,750. Also with this we required that the
17 developers come in and have a compliance review hearing
18 with us. They did that. They came in, I believe it
19 was October 5. They came in. And that was myself and
20 my supervisor, Keith Curtis, and we went over
21 corrective actions, what needed to be done, what we
22 expected to be done, a time line for it to be done, et
23 cetera.

24 Most of those things at this point have been
25 addressed. As of November 17, the site is green, the

1 water coming out is now clear, it's in much better
2 shape. There is still a small drainage issue we have
3 to contend with but has little to do with these
4 proceedings today. The site is good now, as of
5 November 17th.

6 I actually checked it -- well, I don't remember
7 exactly. I believe it was last week. Early last week
8 I checked it. It's still in good shape. To break it
9 all down for you: First offense, written warning;
10 second offense, notice of violation; third offense,
11 notice of violation with a civil penalty; fourth
12 offense, notice of violation with a civil penalty and
13 required to attend a compliance review meeting.

14 The third offense penalties, I have broken those
15 down for you, too. 2(c) is a tracking penalty. And
16 the protocol -- I've actually got one. I can pass it
17 around, if you want to look at it. I'm sure you're
18 pretty familiar with it.

19 Basically, it's \$250 per day. One day is \$250.
20 3(c) is for sediment controls not being maintained and
21 sediment discharge, which at the third offense level
22 carries \$100 per discharge point per day -- or per
23 discharge, excuse me. In this case there were four
24 points, one discharge, \$400. The total for the third
25 offense notice of violation was \$650.

1 And the fourth offense is the same issues, \$250
2 per day for tracking at the one day. That one, I could
3 have charged him with more, but I actually only charged
4 for the day I was there, the day physically I saw the
5 problem. 3(d) is the same offense, but it's now at the
6 fourth level, which carries \$500 per discharge point,
7 per discharge.

8 At that time there were five points of
9 discharge. One discharge, that's \$2,500, for a total
10 of \$2,750.00 on the fourth offense. And the grand
11 total between the third and fourth offense is \$3,400.

12 Anybody got any questions?

13 MR. SIKES: I do. Discharge 1, is that into a
14 specific water body? Is that one discharge? Or is
15 that an inlet, alternating inlets or --

16 MR. SWILLEY: The way we look at it, this whole
17 site is within one watershed. But that's not how we
18 define it. There were five separate points from the
19 site where sediment was being actively discharged.
20 That's how we found it.

21 MR. SIKES: Were there any remediation efforts
22 to clean up some of what was actually going off site?

23 MR. SWILLEY: There were continuous efforts.
24 Some misguided. Some ill advised. There were efforts.
25 They just didn't accomplish the goal. And until you

1 actually accomplish the goal, you're still in
2 violation.

3 MR. WALLIS: What was done to clean up the
4 neighboring properties?

5 MR. SWILLEY: Little, if anything, that I'm
6 aware of. There was one yard in question where several
7 loads of sediment, you could have dumped a small pickup
8 truck of sediment in the yard. I do believe they
9 cleaned some of that up. That was the original
10 complaint. It was one of the main parcels attached to
11 the property. Now, as far as everything else, most of
12 it escaped, unfortunately, into the storm drains,
13 washed down city streets, and found its way to the
14 river.

15 MR. MOEGLING: Any more questions?

16 Thank you, Jeremy. If we have anything come
17 up, we'll bring you back up.

18 MR. SWILLEY: Thank you very much.

19 MR. DINGMAN: Good morning -- or afternoon,
20 sorry.

21 My name is Harold Dingman. I'm one of the
22 developers. I would say Jeremy and Keith have worked
23 with us very hard. I'm not here complaining about the
24 penalties. The only thing I will say in our defense is
25 really two things: Number one, we have done a lot of

1 expensive work with the streets. I pressure washed
2 that lady's driveway with the -- and pressure washed
3 her whole driveway. In fact, we had to do it twice,
4 after heavy storms, and even did some landscaping at
5 another neighbor's property.

6 We have -- it seemed to be the worst possible
7 site, very steep hill going right down to the road.
8 And I will admit we didn't do everything we should
9 have. I'm not going to lie and say that.

10 We put up our sediment fences, we put up bales,
11 washed them out. When we got two or three inches of
12 rain in just a few hours, seemed like it always falls
13 on Kenton Ridge. It would just overwhelm us.

14 Eventually we were able to -- what we did, we
15 went and put covering, mesh matting over the whole side
16 of the hill, but it washed underneath, washed all the
17 dirt and everything else from underneath and left it
18 there.

19 I don't think -- didn't have time for the seeds
20 that we put on it to catch. Fortunately, what saved us
21 when we seeded it, strawed, and meshed it again,
22 fortunately we had three or four weeks of halfway
23 decent weather, so the grass actually grew and now we
24 have all of our areas contained.

25 But it's been a nightmare for us. We spent a

1 lot of money. We haven't done our best, I will admit
2 that. The only thing I'm here is asking if -- we
3 probably put in this last time about \$5,000, in making
4 sure we stabilized everything.

5 And if there's any reduction of the penalties,
6 that's all we're asking for. Again, Jeremy and Keith
7 have been very fair with us, worked with us. It's just
8 a tough piece of property. Seems like everytime we put
9 up the silt fence, it would wash it over, put up bales
10 of hay, wash it over. We spent a lot of time cleaning
11 the streets and trying to get the dirt back up. I
12 understand we're in violation, and I'm not going to
13 deny that. Thank you.

14 MR. MOEGLING: Was this a large enough
15 development to have plans reviewed, approved?

16 MR. SWILLEY: Yes, sir, it was. Originally the
17 subdivision did go through our review process,
18 permitted, and we performed inspections. In effect
19 during the construction of the infrastructure, the
20 streets, the stormwater pipes, and detention ponds, et
21 cetera, there were civil penalties issued at that time,
22 as well. But they corrected the issues, stabilized the
23 site, and the work was done.

24 There was no idea, from our point of view, or
25 Mae Dell's, as to whether -- when or where they might

1 build a house. So it's imprudent of us, and the way we
2 normally handle things, we will close the permit out.
3 And then as houses are built, we will just work on
4 those individual home sites.

5 In this case the entire subdivision was
6 developed by the same -- I don't know if they were
7 exactly the same LLC as the one that -- you know, it's
8 the same players, I think. But in any event, yes, it
9 was permitted at one time and then closed, and then
10 these things occurred.

11 Now, individual, single-family homes are not
12 required to get a land disturbing permit. Unless we
13 see an offense or get a complaint, et cetera, they do
14 not receive concurrent inspections at all.

15 MR. SIKES: Question. Was there, between the
16 notice of the June 8 inspection -- I know that you sent
17 out the correct warning on June 15 -- was there any
18 verbal warnings or communication between the June 8
19 inspection and the subsequent July 13 inspection?

20 MR. SWILLEY: Yes. On the 5th, actually, is
21 when we received the complaint. I was out of town.
22 And Mr. Caylor met with the lady and talked to her. He
23 left a message at that time.

24 On the 8th is when I actually visited the site.
25 I spoke to Mr. Dingman at that time and explained the

1 necessary corrections and informed him notice of
2 violation, actually a written warning would be issued.
3 Also on the 13th, I came back, looked at the site
4 again, and talked to Mr. Dingman at that time, as well,
5 and also informed him again that he would be receiving
6 a notice of violation.

7 Between there and September 2nd, I performed
8 three other inspections and talked to somebody with Mae
9 Dell Corporation on all three.

10 MR. SIKES: So the hay bales that I see on
11 July 13 and the lose, like, netting of some sort, all
12 that was installed after the first notification?

13 MR. SWILLEY: Yes, sir.

14 MR. SIKES: Thank you.

15 MR. PATEL: I have a question: Did, at any
16 time, Mr. Dingman come back to you and tell you that
17 they've done this, that, and the other thing to fix the
18 problem?

19 MR. SWILLEY: Yes. In fact, several times we
20 discussed the site. He told me some protections he had
21 put in place. Including the straw matting that he
22 spoke of, and you can see in the pictures here, the
23 straw bales. Unfortunately, and I explained that to
24 him at the time, the straw bales are not permitted as a
25 sediment control device. They're only to be used as

1 cover. The State does not accept that, nor do we.

2 Also, the straw matting, while the rain did
3 have -- and I'm not saying -- you know, he's absolutely
4 right, the rain did play a part in the problems he had
5 with it; however, it was not installed correctly. If
6 you don't get complete good cover with the ground,
7 don't get it stapled down, you don't have top soil
8 underneath it and seeding, it just doesn't work. That
9 was part of the problem, as well.

10 MR. PATEL: My question was, did you contact
11 him or did he contact you?

12 MR. SWILLEY: Usually I contacted him. There
13 were a few times where he contacted me. And I believe
14 the straw matting was one of the instances where he
15 called me and said, Hey, I put this in. And that may
16 very well have been what prompted me to go back on the
17 13th, which is what I did, hoping that it was repaired.

18 Either way, he was getting an inspection that
19 week. Either way. Yes, he did contact me on a couple
20 occasions, and I contacted him, as well.

21 MR. PATEL: Okay.

22 MR. MOEGLING: Any more questions? Comments?

23 MR. PATEL: I would say, Mr. Chairman, the
24 weather has been not cooperating, would be a lot of
25 rain, and Mr. Dingman has made an attempt to fix the

1 problem, taking care of the problem, that they should
2 be considered in assessing the penalties.

3 MR. WALLIS: I agree with that.

4 would it be reasonable to say that this wasn't
5 that he ignored you; that he didn't do the remedial
6 work he should have?

7 MR. PATEL: As well as as quick.

8 MR. SWILLEY: I like Mr. Dingman. But the last
9 time I was in here, I defended the guy. I can't do
10 that this time. He had ample opportunity, he just
11 didn't take it. I met with him several times.

12 He had been in violation before when he
13 originally developed the site. He knows better. This
14 was not a case of he didn't have time, he didn't know,
15 he tried, but it just wasn't -- really, ultimately,
16 this should have been stopped way sooner than it was.

17 There was a lot of discharges, a lot of
18 sediment came off that site. He didn't necessarily
19 ignore me, but he didn't follow through, either.

20 So, you know, personally, I think the fine is
21 fair. However, I don't have to pay it. So I do think
22 that the site now is in compliance, and he has made
23 steps to correct it. And I think that should be taken
24 into consideration.

25 MR. MOEGLING: One comment I've made before in

1 these hearings. Mr. Dingman, you should know how to
2 stop the problem. That's not the function of this man
3 to come out and help fix it for you. When you get into
4 development, that's your responsibility. I understand
5 you had problems. That's part of the building, as far
6 as I can see. Maybe I'm wrong.

7 Doug, you tell me if I'm going off base. I
8 think we're going to have to say, people are out doing
9 construction, disturbing the ground, we're going to
10 have to protect it. Again, we're going to get beat on
11 if we don't do our job. So my comment is, I think --
12 in fact, I was rather surprised, I didn't think this
13 was an excessive fine at all.

14 MR. STEIN: I've been uncharacteristically
15 silent. I don't know Mr. Dingman, but he seems like a
16 nice guy. The fact he went out and cleaned up is a lot
17 more than we get out of some folks.

18 On the other hand, the fines assessed are a
19 little bit like getting tickets on your parking meter,
20 you only have been fined for the times that the
21 inspector came by. There were many more days that the
22 site was likely in violation, and the fines could have
23 been immense. I've got teenagers. And they have
24 taught me that when you say, This is what the
25 consequence is going to be, then you just need to stick

1 with it or you really don't have a rule at all. So I
2 reluctantly move to let the fine stand.

3 MR. MOEGLING: Is that a motion?

4 MR. STEIN: Yes.

5 MS. MAY: I second.

6 MR. MOEGLING: We have a motion and a second.
7 Everybody -- because we've heard different opinions,
8 everybody raise your hand if you're in favor of the
9 motion.

10 MR. SIKES: I think I will support him.

11 MR. MOEGLING: That's everybody here, so the
12 motion has passed.

13 Mr. Dingman, we're not going to reduce the
14 fine. My suggestion is, you know, if you're going to
15 continue to develop, you're going to run into this
16 again, unless you stick with it. No matter how hard it
17 is in the rain, you're still going to be responsible.

18 MR. DINGMAN: I can assure you this is my last
19 development.

20 MR. STEIN: You cleaned up. I want to
21 recognize that is not often done by folks that have
22 been fined.

23 MR. MOEGLING: And we have had more expensive
24 heavy fines before.

25 MR. SWILLEY: I would like to apologize. I've

1 got to call it like I see it. I like you but . . .

2 MR. MOEGLING: Okay. Next thing on the agenda
3 -- is that you, Mrs. Mayes? We need to make
4 arrangement with that mic so Mrs. Mayes can sit and
5 talk into the mic.

6 Now, in this case, Mrs. Mayes, I understand
7 that you have a problem with the stormwater fee. It's
8 not the same thing like we've had just now.

9 MS. MAYES: No.

10 MR. MOEGLING: It's the stormwater fee that
11 you're objecting to?

12 MS. MAYES: Yes.

13 MR. MOEGLING: Have at it.

14 MS. MAYES: I know we need to clean up the
15 water, I'm not opposed to that, but it needs to be done
16 fairly and just. And it's not being done that way.
17 You have to prove to me the people in county is paying
18 the amount I'm paying. Also I called all over the
19 United States to deal with people and, trust me, I know
20 lots and lots and lots of people. They don't know what
21 in the world we're talking about here in Tennessee.

22 I called down in Florida the other day. They
23 didn't know what I was talking about either, to three
24 people that I met back here in the summer. I said, you
25 know, if they're going to put a fee on me, do it

1 justly. And I am against the churches being fined.
2 I'm going to tell you something, it's going to come
3 back on ya'll. That's like fining God for its raining.
4 That's exactly what I feel about it.

5 On mine, I don't even have a sewer up there; I
6 have a septic tank. And here I'm paying taxes on water
7 that's more than what I use. I'm very stingy with
8 water. That's the way we were brought up, we were on a
9 well.

10 You know, I'm getting taxed for rain running
11 off my property down in the street in the ditch. Now,
12 I don't know where it goes to. I haven't traced it and
13 I don't know where it goes.

14 Anyway, I still don't think the county and
15 these people are being taxed like we are. Because I
16 asked his sister the other day, Have you got taxes on
17 your stormwater fee? And she said, No. But I don't
18 think she knows what she's looking at, either. Anyway,
19 everybody should be taxed fairly. If one person is
20 going to get it, everybody should get it. I talked to
21 a lady at Nashville that worked for the VA system. And
22 she said she didn't know anything about it, either. I
23 said, You better check your taxes and start fighting
24 against it.

25 And like I've said, I've talked to people in

1 California, Hawaii, North Dakota, Illinois, Indiana,
2 Michigan, nobody knows what we're talking about.
3 Maine, I did talk to a guy in Maine the other night,
4 New York City. So where is this coming from if it's
5 fairly mandated?

6 MR. MOEGLING: Well, the requirement for the
7 stormwater act initially was for cities of 100,000 or
8 larger.

9 MS. MAYES: I believe New York City is a
10 hundred thousand.

11 MR. MOEGLING: And if it is, they're paying a
12 stormwater fee. Some people, like Knoxville, for
13 instance, have decided to pay for it out of their real
14 estate taxes. It's not a separate tax or fee,
15 whatever, I have to be careful. But Nashville does.
16 We just went through that on the Blue Ribbon Committee.
17 They are paying. If they're in a county, now, which is
18 a metro, Knoxville --

19 MS. MALUEG: Nashville.

20 MR. MOEGLING: -- Nashville. Then that whole
21 county is paying.

22 MS. MAYES: Is that \$115 a year?

23 MR. MOEGLING: I have no idea.

24 MS. MAYES: Who set the price on what we're
25 going to pay?

1 MR. MOEGLING: City Council would set the price
2 on what they have to fund to meet their NPDES permit.
3 In our case, in the county, that's a separate entity,
4 they did start a stormwater program, what, two years
5 ago, Mo?

6 MR. MINKARA: For the county?

7 MR. MOEGLING: Yes.

8 MR. MINKARA: That's correct. Hamilton County
9 had a user fee, I believe, four years ago. It's a
10 different rate because they're a Phase 2 community, and
11 we're Phase 1, so we have more permit -- more
12 requirement than Hamilton County. I don't remember the
13 actual rate, but it's less than our rate.

14 MR. MOEGLING: Requirements are a lot less
15 stringent.

16 MR. STEIN: Ms. Mayes, if I could -- let me
17 explain the genesis of all this. I believe that this
18 goes back to the Clean Water Act of 1976, might have
19 been '72.

20 MS. MAYES: Yeah. It was called something else
21 when they added it to the taxes. Well, about '74,
22 because we were a homeowner then, and they added
23 something then and they called it something else and
24 now it's called something else.

25 MR. STEIN: Whatever that was added to your

1 tax bill in '74 didn't have anything to do with the
2 Federal Clean Water Act, which is where this comes
3 from. I'm a contractor, like I said earlier. I
4 actually went, as a small business entity, before the
5 EPA, who was ultimately -- the ultimate administrator
6 of this law, which has now resulted in you having a fee
7 on your tax bill. I went to protest what they were
8 getting ready to pass.

9 It's also part of that Act. And that is
10 because the National Resources Defense Counsel sued the
11 EPA because they're not enforcing this law strictly
12 enough, and they're going to issue, and I think it will
13 become effective between the next 75 or 80 days, a new
14 effluent limitation guideline that will dictate what
15 the water quality is coming off construction sites.

16 I went up there to talk to them about that.
17 They asked me what the impact of the new regulation
18 would be on my business. And I told them it would cost
19 \$50,000 per acre on every construction site, which
20 essentially would kill development in this part of the
21 world. So I appreciate the fact that you're protesting
22 this fee that doesn't seem to make any sense to you.

23 what's happened, because of the Clean Water
24 Act, is that the way the EPA has put it down is, first
25 they had communities that were a million people and

1 more that had to meet these requirements. Is that
2 right?

3 MR. MINDARA: Hundred thousand.

4 MR. STEIN: So we were in the first wave, City
5 of Chattanooga. It's gone down through municipalities,
6 depending on their population. The enforcement of that
7 regulation and the ability of the municipality to pay
8 for that is up to them. They have to determine in
9 their own best interest, please correct me if I say
10 anything that's incorrect, because I've had a hard time
11 understanding it.

12 They have to pay for it the best way they can.
13 So some places like New York City, they may not tack on
14 their tax bill "stormwater fee," they may just raise
15 their taxes. And my daughter lives in New York City,
16 and I can assure you that their taxes are much higher
17 than ours are for whatever reason. Maybe it cost more
18 to catch dogs there, too, all of those municipal
19 services have to be paid for some way or another.

20 This particular one is so contentious because
21 the federal government just said, These are the rules,
22 you have to abide by them, you have to figure out how
23 you're going to do it yourselves.

24 And each state had to form a new bureaucracy,
25 in this case it was TDEC, Tennessee Department of

1 Environmental Conservation. In Georgia they have
2 Georgia Environmental Protection Division. Each state
3 has a different one. And the State is responsible for
4 enforcing the federal law. Then the states have made
5 these municipalities responsible for regulating, at
6 least, the state law.

7 So that's why TDEC is telling us what we have
8 to do, but they've got to make sure the State of
9 Tennessee complies with the federal law or they get cut
10 off for funding and all kinds of stuff, whatever the
11 consequences are.

12 The City of Chattanooga either -- has to derive
13 that money from the citizens in some way. The only
14 source of revenue they have are these property taxes
15 and other fees. They're not going to get enough by
16 putting up speed control cameras to pay for it. That's
17 what it is.

18 It's a little bit like I was talking earlier to
19 the other gentleman about, we all pay property taxes
20 and we pay for kids to go to public school, whether
21 anybody has kids in public school or kids are grown and
22 out of school. Everybody has to pay for some municipal
23 services. So that's what the origin of this is.

24 This is just the way the City of Chattanooga
25 has chosen to deal with it. The other option is to

1 raise your property taxes in some other way, they got
2 to get the revenue somewhere. They have to comply with
3 the law.

4 MS. MAYES: I'm not here to criticize ya'll. I
5 know you're doing a fairly good job or I would tell you
6 you wasn't. Like I told Jim earlier, I don't know what
7 we need to do to cut taxes, but I know -- I don't think
8 city people should have to pay county taxes. If you
9 live in the city, you should, say, say my taxes are
10 \$700, we should pay a thousand to the City. We
11 shouldn't have to pay county taxes.

12 County don't do a darn thing for me. I don't
13 even go up on the county road but once in a blue
14 million. But do they come down through our city roads?
15 Yes, everytime. Look at off Lower Mill Road and look
16 at all the people coming out of Mill Valley Road. You
17 can't even get out on Mill Valley Road at certain
18 times. So those people should have to pay more taxes
19 than we're having to pay in the city because they're
20 coming down our way every day, but we're paying more
21 county taxes than city taxes. I have a problem with
22 that.

23 When I lived in Virginia for five years, we
24 paid city taxes. You lived in the city, you paid city.
25 If you lived in the county, you paid county. So what

1 if it's more in the city? You got their services. Now
2 if it means metro government, if that works, fine, I
3 don't care. I am, for one, cutting taxes.

4 MR. MOEGLING: Ms. Mayes, you won't get any
5 argument from me.

6 MS. MAYES: Maybe I need to sit up there.

7 MR. MOEGLING: Come on. We need you.

8 MS. MAYES: I'm not here to raise -- or throw a
9 shoe at you. Okay. I had to retire early. I was a
10 nurse making pretty good money. Two years ago, I was
11 bringing in a pretty good paycheck in management. But
12 because of a little 16-year-old that hit me with a car
13 ten years ago, it's made it impossible.

14 MR. MOEGLING: I understand what you're saying.

15 MS. MAYES: And he's on disability, social
16 security.

17 MR. MOEGLING: From our point of view, all we
18 represent is the City. And you heard earlier today the
19 types of things that we're being imposed on no matter
20 what. And I'll have to say, in general, we're
21 responsible for that. Through our representatives at
22 the federal level, this law was written.

23 MS. MAYES: I'll start with them next. I'm not
24 saying they were right or wrong. I'm just saying we
25 voted for that to happen, now we're paying for it. As

1 it comes and as the regulations grow, you can see our
2 fee -- and go back just a little bit. This fee was
3 started in 1993, essentially \$35, \$36.

4 MR. MINKARA: 36 and 24.

5 MR. MOEGLING: And 24, depending on the size of
6 your house. It has not been raised since that point in
7 time. The cost to the City has continued to increase.
8 It has been supplemented by various different ways.
9 There was some money held in a contingency fund and
10 paid for it along the way, in response to roads put
11 into it. Then appropriations from the City Council,
12 your tax money, so it has continued to grow.

13 We've reached the point where it's become a
14 large item, where you had to either increase taxes,
15 essentially, I'm sure, to cover it. Or you came to
16 this fee. And the fee has gone up.

17 It is a strain on the people, especially at
18 this time. It even appears to be, and this other
19 committee that is looking at the rate, certainly there
20 are more business people represented, they think that
21 it has gone up for them much worse.

22 So how that comes out, the fee will stay the
23 way it is or adjust the stormwater fee and the City
24 will have to supplement that, I don't know. Right now,
25 that's where the fee is.

1 MS. MAYES: well, I talked to several City
2 Council people, because I called them. I just went
3 right down the list, voiced my opinion. They don't
4 know if this is going to be enough. Then I found out
5 about all these penalties that the City got imposed on,
6 I forget how much they were. That's ridiculous.

7 You know, if our government is in that bad a
8 shape up there, you know what, that's the reason we had
9 the revolutionary war. Now, you know, it's pitiful,
10 but I feel like I'm being taxed without representation.
11 You know, I called the White House four times the other
12 day on a different matter. If I need to go sit in the
13 White House and get arrested, I'll talk to Obama
14 somehow.

15 I'll call back and leave a message, I need to
16 talk to Obama, he needs to listen. Or somebody else.
17 I talked to Corker's office. I've talked to Wamp. I
18 know them all personally. And I will start in on this
19 next.

20 MR. MOEGLING: For our problem, again, I
21 understand your concern. I guess I don't know what we
22 can do. If you have a suggestion for us.

23 MS. MALUEG: If I may interject here.

24 MR. MOEGLING: Sure, go ahead.

25 MS. MALUEG: I appreciate everything you have

1 said. From a legal point of view, this Board is
2 charged with certain powers and responsibilities. One
3 of the duties it has is to hear certain types of
4 appeals that are enumerated under our City code.

5 There are appeals set forth in our City code to
6 protest an erroneous bill, a bill that -- for which an
7 owner believes was assessed improperly and that the
8 amount of area that's being charged for the stormwater
9 runoff is incorrect, there's a procedure to take that
10 to the water quality manager. And at this point the
11 water quality manager reassesses and decides that the
12 bill is correct, then that property owner can appeal to
13 this stormwater board.

14 The other power that this board has is to
15 review, as it did in the previous case, the assessment
16 of a civil penalty. In this particular case, I don't
17 know that the Board, since this is not the actual fee
18 itself and what is being charged, there is not a
19 procedure set forth in our code for an appeal of that.

20 I don't believe that that would be a power or a
21 duty that this Board would have to decide as to the fee
22 being too high. If there's another reason, if you
23 believe your fee is wrong and needs to be reassessed,
24 that is an issue that can be taken to the manager. I
25 believe, that that is -- we have extended that period

1 of time for 2009 by ordinance to March 1,

2 MS. MAYES: See, this is not just -- okay.

3 Take somebody down here in Section 8 housing, okay?

4 Now, who is paying for their stormwater drainage fee?

5 They should be charged. You know, some of these people
6 are not even paying any rent. So that is not just.

7 This is what I'm saying, if one person gets
8 charged, everybody needs to get charged. That's my
9 biggest gripe. There's some people is not paying this
10 tax. You can call it a fee or tax, I don't care what
11 we call it, it's through a tax, it's on my taxes. They
12 should have to pay some of those fees. There's my
13 biggest gripe.

14 MR. PATEL: I think the Section 8 people, they
15 pay rent to people, and the landlord will pay the
16 stormwater fees.

17 MS. MAYES: Who is subsidizing their housing?
18 Now, I'm going to tell you, I worked with too many
19 people who pay hardly nothing in rent over the years.
20 I worked with really poor people, I'm not downing them
21 for being poor, because they did me a good job and made
22 me look good on my job, but I know, I know too much
23 about how much they pay in rent, so huh-uh.

24 MR. MOEGLING: But that landlord is collecting
25 rent, and he will pay the stormwater fee.

1 MS. MAYES: well, the whole system, our whole
2 system is going belly-up. Okay. Look at this guy
3 right here, how much tax he's going to have to pay.
4 Something has to be done. I am on a fixed income right
5 now.

6 MR. MOEGLING: Again, as Valerie says, I don't
7 know really what --

8 MS. MAYES: I'll tell you what, buy my house,
9 come and buy my house right now. I will move to Rome
10 County. I have some family property that's been in my
11 generation. I will move, and y'all can have it down
12 here.

13 MS. MALUEG: I just want to clarify, for the
14 record, what I was referring to earlier, since we are
15 making a record of this. I was referring to Section
16 31-362 of the City Code that lists the general duties
17 and powers of the Board. And earlier I was referring
18 to the civil penalty section that can be appealed for
19 the assessment of a fine. And that is set forth in
20 Chapter 31 of the code and also the protest for the
21 erroneous bill that may be appealed as set forth in
22 Chapter 31.

23 MR. MOEGLING: Mo, you have something you would
24 like to add?

25 MR. MINKARA: Right. Reading the appeal letter

1 that we got from Ms. Mayes, there's probably more than
2 one issue that she was referring to. But ideally, I
3 agree with Valerie, according to the City code, the
4 appeal process or the hearing in front of the
5 stormwater board, if a citizen or user is disagreeing
6 with the actual -- the measurement of the fee, and
7 that's according to the rule that was referred to, so
8 the City staff did review whether the fee -- or there's
9 an exemption or not or we did review the accuracy of
10 the fee and identified the receiving system to be a
11 City-maintained system.

12 So according to the City code, there should be
13 a fee assessed with this property, because the runoff
14 from this property discharges into City-maintained
15 structure.

16 MS. MALUEG: Can you explain, please, for the
17 record, what that fee was, and was it based on
18 residential charge, please?

19 MR. MINKARA: Yes. Nick Cookson is on my
20 staff, and he reviewed this case and would be glad to
21 clarify this point.

22 MS. MALUEG: Thank you.

23 MR. COOKSON: Yes. Nick Cookson. I deal
24 solely with appeal and credit process. I'm the one
25 that dealt with Ms. Mayes' appeal. The fee is assessed

1 to all residents within the Chattanooga City limits.
2 According to this Section 31-361, Owner of a parcel
3 that directly or indirectly uses the stormwater system
4 will pay the due fee. What I look at when I assess
5 each person's appeal is where they are in the city and
6 if they discharge directly or indirectly into a
7 city-maintained system.

8 As this slide shows -- and you guys, I
9 presented these slides for you, they're color slides.
10 As you can see, her house is circled in yellow,
11 1030 Lower Mill Road. City maintained a drainage ditch
12 that goes along Lower Mill Road, would be considered
13 direct city-maintained system. Also, any time
14 drainage goes under another road, there is typically
15 piping that is maintained by the City, as well.

16 As you can see, it's labeled under Forest Meade
17 Drive, there is a corrugated metal piping that the City
18 maintains there, as well. We stopped there because
19 that's justification for the fee. But it continues on
20 through various --

21 MR. STEIN: Ultimately, what's the receiving
22 body of water?

23 MR. COOKSON: With this direct property, I'm
24 not sure. I would have to go back and check. I don't
25 know.

1 MR. MAYES: There's the creek right on down
2 from our house. All this water from our house is
3 evidently running into --

4 MS. MALUEG: Excuse me, please identify
5 yourself. If you're going to testify, you need to be
6 sworn.

7 MR. MOEGLING: You need to be sworn and then
8 talk into the mic. I hate to do that, but we have to.
9 Be sworn and talk into the mic. If you would go back
10 over what you just said. Wait a minute. Be sworn
11 before you make a statement.

12 (At this time Mr. Mayes was sworn to tell the
13 truth, testified as follows.)

14 MR. STEIN: Mr. Mayes, also sign in, if you
15 would.

16 MR. MAYES: What I said, our house is right
17 there at 1030. Since they came out there and repaved
18 the road, they practically filled the ditches up doing
19 that. And they haven't been back out to clean them
20 out. But all this water, even around Forest Meade,
21 there's a creek right on down the road, maybe a half
22 mile. All this water, evidently, is running into that
23 creek. I think it's called Chickamauga Creek. But I
24 would say that's where it's running into.

25 MR. MOEGLING: Okay.

1 MS. MAYES: I don't know where it's running.

2 MR. MAYES: I hope you understand where all
3 this water is running.

4 MR. MOEGLING: I would think Lower Mill. I
5 would say that's close to Chickamauga Creek.

6 MR. MAYES: Plus, you've got houses up on
7 Forest Meade behind us, and we're on the side of a hill
8 so we're getting all their water running down on ours
9 and running off our property.

10 MS. MALUEG: If the issue is whether or not an
11 exemption applies, then that would certainly fall under
12 the protest under the erroneous billing. I would like
13 the City to clarify and address how it arrived that
14 this property is not exempt, for the record, please.

15 MR. MINKARA: Sure. The City staff have mapped
16 and identified the property and look at the runoff from
17 this property, and the prior runoff from the property
18 enter the City stormwater system. So it wouldn't be
19 exempt under the State code.

20 MR. MAYES: All jokes aside, the City needs to
21 come out on Lower Mill and clean the ditches out, where
22 they put this new surface down. They took out a lot of
23 gravel and stuff out of the ditches and sort of filled
24 them back up. They need to come back and dig them out.
25 For a while they had them dug out and they were

1 draining a lot better.

2 MS. MAYES: You know, now I'm going to tell you
3 something else, and this is off the beaten path, I did
4 talk to Pam Ladd about it. Our driveway, the road kind
5 of slants like this. Our driveway is right in that
6 curve. You can see right there where it says "City
7 maintains storm." Our driveway goes straight uphill,
8 like that. We're on the side of the hill. Naturally,
9 water is going to run off. Ain't no way you can catch
10 it.

11 Okay. When they come back out here and threw
12 down that little bit, and thank God they did come.
13 There was about a hundred thousand holes up through
14 that road for over two or three years. It was getting
15 where you couldn't even miss them. And I'm thankful
16 for what they did.

17 I talked to a City engineer, left a message,
18 that when ya'll come out here repaving, you better be
19 careful. Our van will drag when you come down -- we
20 back up our driveway. I can't even back up it with my
21 neck and back. Okay? When you come down it, you can't
22 see around that curve, can't see down there. I fight
23 with the City every year to clean the bank off. And
24 finally I get it done, because I threatened to call
25 Channel 3 every year. I say "It's me." When I call

1 the City, I say "It's me again, get out here and clean
2 the bank." Me and him can't do it anymore.

3 So anyway, now I have an Astro Van. When you
4 come down, it's dragging. When you come out on the
5 road, come out there, you can see it. And the truck,
6 we have a four-wheel drive truck. It's even dragging
7 if you don't cut it at the right angle. When we go to
8 sell this house -- because anybody with a little bitty
9 car will not be coming up our driveway.

10 MR. MOEGLING: Anybody have questions of
11 Ms. Mayes?

12 MS. MAYES: Just come and look.

13 MR. MOEGLING: I'm trying to get this to --

14 MS. MAYES: Like I say about the water, I know
15 we have to clean it up. I'm willing to pay my fair
16 share, but I want it to be just and fair to everybody.

17 MR. MOEGLING: Again, in the city, I think the
18 new rate structure -- and again, I would suggest also
19 tomorrow night this Blue Ribbon Committee on rates is
20 meeting in the City Council Chambers from 4 until 5 and
21 then again from 6 until 7. If you have input in terms
22 of the rate, fairness of the rate, I would suggest you
23 talk to them. As far as we can see, what our
24 responsibility, and the staff has looked at it and said
25 it does fall under, it is -- the fee should be imposed.

1 The way we have it now, I assume that's been imposed as
2 a residence and that's the way it should be.

3 MR. STEIN: We have no authority beyond that.

4 MR. MINKARA: Right.

5 MS. MAYES: I understand that.

6 MS. MALUEG: She did apply. There's a letter.
7 She did lodge a letter asking for the manager to review
8 it. The manager, as they've testified, did review it.

9 MS. MAYES: And he did.

10 MS. MALUEG: And did make a written finding
11 December 7, 2009 -- that probably ought to be put into
12 the record -- that the stormwater runoff is into the
13 City-maintained stormwater system. That brings it now
14 to the Board. She did properly appeal that, now that I
15 have this.

16 MS. MAYES: Then I wrote a letter.

17 MS. MALUEG: The Board does have the power to
18 decide whether the exemptions, or the nonexemptions,
19 should be upheld but does not have the authority
20 regarding the fact that it's too high. That's the
21 distinction I'm trying to make.

22 MR. MOEGLING: It's either yes or no. All
23 right, any other questions? Input? And I would like
24 someone to make a motion that we accept what the
25 staff --

1 MS. MAYES: Jim, I would like to say one more
2 word. My son applied for the City of Chattanooga about
3 three and a half years ago, and he was a chemical
4 engineer. And he would have done your sampling and
5 done it right and made your machines be calibrated
6 right. Trust me, he knows how to do it.

7 He says, I can't get a job in Chattanooga for
8 less (sic) than \$8 an hour, and I'm going back to
9 school. Because he says, this is not getting me where
10 I'm at. Right now he's at \$128,000 in debt because now
11 he's going to be a nuclear pharmacist, because he wants
12 to do research on cancer drugs. That's his main goal.

13 But I'm telling you he done core sampling with
14 TVA while he was at school at UTC for three months down
15 at Mussel Shoals. He's been up and down the Tennessee
16 River and done water samples. So I know TVA done water
17 samples and things with the river. And, you know, I
18 think the City and everybody needs to coordinate with
19 the TVA. And I am for cleaning up the rivers.

20 MR. MOEGLING: Okay. Somebody make a motion.

21 MR. SIKES: So moved.

22 MR. PAYNE: I'll second it.

23 MR. SIKES: Make a motion to follow the staff's
24 recommendations.

25 MR. PAYNE: Second.

1 MR. MOEGLING: I have a motion and a second.

2 Everyone in favor, say aye.

3 (All said aye in array.)

4 MR. MOEGLING: Opposed?

5 Now, again, we can't change your stormwater
6 fee. Okay? That really wasn't -- all we're saying is
7 whether the staff did their job or not.

8 MS. MAYES: And they did.

9 MR. MOEGLING: Yes. Now, my next point, I
10 don't want to discourage you from going off, right. If
11 you think it's unfair, say so, and I think you would.
12 So other than that, I don't know what else we can do
13 for you on this Board.

14 MS. MAYES: This was my next step. I got my
15 letter through the mail, which I have it, to appear
16 down here. And that's what I did. And I think, I
17 think they did a good job, they did what they was
18 supposed to, according to the law. It's just not fair
19 what we're paying. That's all I'm griping about.

20 MR. MOEGLING: Like I said, tomorrow night is
21 the public meeting on rate structure. If you have
22 input, I think they should listen. I'll be there
23 tomorrow night. I invite you to come.

24 MS. MAYES: And I want people to do their job
25 and do it right. Just like them calibration of those

1 machines, that was not acceptable.

2 MR. MOEGLING: That is difficult. That's one
3 of the things I've asked about. I'm ex-TVA. Every
4 once in a while we have something, the instrument was
5 out of calibration. I heard TDEC say that that
6 invalidated all the data that they had ever collected
7 because it was out of calibration. That's not true.
8 We had things that slipped through the cracks
9 occasionally at TVA. You go look at it, see what the
10 impact is.

11 If it's out of calibration, you check the
12 calibration and have somebody, get an engineer, go
13 back, what's the impact, if it is out of calibration,
14 how much data did it invalidate and how much did it
15 invalidate that data? It's not like everything is bad.

16 I know there are times when you're going to run
17 into that situation. Now, how much, that comes back to
18 training and what we heard from the monitoring people.
19 They're addressing that and hope that that gets better.

20 MS. MAYES: Well, I appreciate your time. Like
21 I said, I'm not mad at anybody down here. I knew I
22 wanted to give my say-so. If people don't speak up,
23 they're going to get what they get. I just want
24 everybody to be fair and get what they have to pay.
25 Because I'm out of here in 18 months, when I see where

1 my son is going to live.

2 MR. MOEGLING: As I said, I truly agree with
3 you, I don't care where you are in the country. I
4 don't think anybody understands the stormwater fee yet.
5 I know the people in Chattanooga don't understand it.
6 We need to do a better job informing the public. So it
7 doesn't surprise me that, when you call around the
8 country, people don't know what you're talking about.

9 MS. MAYES: I asked them, I said is it some
10 other fee? Might not be called this. That's what I
11 tried to talk to them about.

12 MR. MOEGLING: Even as it is, many have an
13 escrow account just like here and never see the fee.
14 Unless you see your tax bill, and if your bank is
15 paying it for you, you don't even see a stormwater fee.

16 MS. MAYES: This may not even be enough. Next
17 year it may be \$175.

18 MR. STEIN: You're right.

19 MR. MOEGLING: That is exactly right. That's
20 dependent upon what the regulators require. That's the
21 reason I was asking you all the questions of the
22 problems the last review, what's the impact on dollars
23 for it? Do we have it covered today? What I hear,
24 yes, this budget, this fee that we --

25 MR. STEIN: For now.

1 MR. MOEGLING: We recommended for City Council
2 and they passed, and today I hear that's going to cover
3 it. Next year, I can't tell you.

4 MS. MAYES: I did run for City Council a couple
5 years ago, and I lost badly, but I still have my signs
6 in the basement. I don't throw away nothing.

7 MR. STEIN: Thanks for speaking up.

8 MR. MOEGLING: Yes, we appreciate it.

9 MS. MAYES: And thank you.

10 MR. MOEGLING: Okay. That's pretty much the
11 end of our agenda.

12 MR. STEIN: What about 5836 Ragnar Drive?

13 MR. MOEGLING: I didn't see anybody here.

14 MR. STEIN: We need to make a note for the
15 record. I would move we handle this like the last one.

16 MS. MALUEG: Identify the property address?

17 MR. STEIN: 5836 Ragnar Drive.

18 MS. MALUEG: Owner's name would be?

19 MR. STEIN: Zelma Pack.

20 MR. MOEGLING: I've got Ragnar. I've got the
21 old -- it's Ragnar.

22 MR. STEIN: My motion is that we uphold the
23 staff decision on 5836 Ragnar Drive.

24 MS. MALUEG: Note first Ms. Pack is not present
25 for the meeting.

1 MR. STEIN: What is the staff's decision?

2 MR. MOEGLING: It's nonexempt.

3 MR. MINDARA: That's correct.

4 MS. MAY: I second that.

5 MR. MOEGLING: 5836 Ragnar Drive, all in favor
6 say aye?

7 (All said aye in array.)

8 MR. MOEGLING: Opposed? Okay. Now we took
9 care of it.

10 One last item that I asked everybody, and we
11 don't need to do anything. If you would like, both as
12 a Board and as an individual of the Board, again,
13 tomorrow night the Blue Ribbon Committee on the rate
14 review is meeting in a public meeting from 4 until 5
15 and again from 6 until 7 in the City Council chambers.

16 Is there anything that we need to send to them
17 about rates, other than what we sent the last time?
18 And we were pretty explicit, after considerable review,
19 we decided that the rate that had been proposed is what
20 needed to be. And I don't know we care whether it's
21 totally in the fee or that's the decision of the City
22 Council, but our recommendation that that fee, as was
23 shown, the \$9.66 this year, and the ECUS -- did I use
24 the right acronym?

25 MR. MINKARA: ERUS per month.

1 MR. MOEGLING: Those were correct. We sent a
2 recommendation through the staff of City Council that
3 that should be imposed. Do we have anything additional
4 that you would care to send to this Blue Ribbon
5 Committee or to City Council? If you have something as
6 an individual, Caroline has volunteered to get that
7 done for us, so we can take it to the meeting tomorrow
8 night, if you have an individual statement.

9 MR. PAYNE: One thing, Mr. Chairman. Do we
10 have a formal budget? I haven't seen one.

11 MR. MOEGLING: Do we have the budget proposed
12 for the fee?

13 MR. STEIN: 20-something million dollars.

14 MR. MOEGLING: Now, Lee said he was able to
15 reduce that, but initially said he could reduce that.
16 And \$15.20 per year for each --

17 MR. MINKARA: ERU stands for equivalent
18 residential unit.

19 MR. MOEGLING: That brings in a projected
20 revenue of \$22,243,647. And I don't know how they came
21 up with that. Anyway, that's what we sent on to the
22 board. That goes up each year. In other words, the
23 next year is 127.20, third year is 139.20, fourth year
24 is 151.20, and fifth year is 163.20. That's what was
25 proposed to the Board.

1 And as far as I know, that's what they approved
2 for this new rate increase. That was put on the first
3 time this year on the tax bill; is that correct?

4 MR. MINKARA: No, that's not correct. Let me
5 make a clarification. The City Council could only
6 raise the rate one year at a time, so this year is
7 \$115.20. Next year they have to do it again, whether
8 they keep it the same or reduce or increase it.

9 MR. MOEGLING: Along with that and I know the
10 staff has been working on, is credits on that rate.
11 Not for residential, because, again, that's kind of
12 like what Mr. Jackson was talking about, going to each
13 house and coming up with credits is very difficult.

14 But for the larger manufacturing areas, credit
15 of up to 50 percent of that fee can be had, if they do
16 the types of things and supply those to the staff,
17 staff reviews, and they can get up to 50 percent credit
18 on their fees.

19 MR. WALLIS: That's the question people have
20 been asking me. Are these credits, are they in the
21 final format?

22 MR. MINKARA: No, it hasn't been fully -- we
23 have presented it to City Council as part of the
24 revisions of the City codes, but it's not finalized
25 yet. Explaining the recommendation to the Blue Ribbon

1 Committee. But we are already taking credit
2 applications, and we have not approved any credit yet
3 but processing. We have processed about 45 credit
4 applications so far, but we have not made any final
5 decisions on the actual credits yet.

6 MR. STEIN: Does everybody on this Board
7 understand what would qualify for a credit and what the
8 purpose of the credit is?

9 MR. WALLIS: That's the next question people
10 are asking me. It's very complex.

11 MR. STEIN: Mo, correct me if I'm wrong, I'm
12 going to try to put this in terms that I think will
13 make people understand what the reason for the credit
14 is and how it's supposed to function.

15 The idea is to turn all of the City of
16 Chattanooga into a filter of some kind to slow down the
17 water, to clean the water, and to reduce the time it
18 takes for the water to come off these paved and hard
19 surfaces to get into the waterways.

20 So if you look at a big map of the City of
21 Chattanooga and you see this big urban landscape, you
22 can identify places on there where -- you know, if we
23 fixed that spot right there where there's no vegetation
24 and all concrete, if we did something right there, that
25 would have a measurable impact.

1 And you want to incent the owner of that
2 property to do something. Now, what it's going to be
3 is what's not perfectly clear to me. Might be all
4 kinds of things.

5 You could have pervious pavements, you could
6 tear it up and vegetate it or grow corn there, I guess,
7 if you could pass the regulations. You know, green
8 roofs would have the largest impact on that, probably,
9 in the City of Chattanooga, of anything that we could
10 do.

11 There's all kinds of things the City could do
12 in terms of -- if you were going to take the streets,
13 for example, if you start thinking about the city as a
14 filter; and what that is is a realization of the idea
15 of what's called low-impact development on a
16 construction site where you space out the erosion
17 control across the site, rather than have a big,
18 gigantic detention pond in the corner where all the
19 water goes and then you try to treat it when it gets to
20 the detention pond, if you slow the water down where it
21 falls, you're way ahead of the game.

22 You have an existing condition that is going to
23 be very difficult to deal with. And one of the
24 manifestations of that is when it rains real hard and
25 we have a power outage, which doesn't help, then you

1 find the city dumping raw sewage into the river.

2 But when we get big rain events, raw sewage
3 goes into the river anyway, because it overwhelms the
4 treatment plant. That's the problem. That's what
5 you're trying to address.

6 If you had green roofs on 50 percent of the
7 city and you had pervious gutters and all the parking
8 lots are pervious, and Blue Cross decided they wanted
9 to farm the top deck of their parking deck, those kinds
10 of things, all of those things can't be done, Valerie.
11 I hear you snickering over there. It can be done.

12 MS. MALUEG: It can be done.

13 MR. STEIN: That's where you're trying to get.

14 18 years ago this city had people here trying
15 who were trying to lead with this green-roof thing and
16 taking their ideas all over the world and being
17 snickered at, essentially.

18 But in Chicago, how many green roofs do they
19 have in Chicago now? They didn't have one in 1992; now
20 they have 600, maybe more. They're kind of leading the
21 way. That's what that is all about.

22 MR. WALLIS: Leading in the country.

23 MR. STEIN: Chicago does, as I understand.
24 But as I also understand, Chicago got the idea from
25 Chattanooga, Chattanooga's leaders were talking about

1 doing it. And we haven't been able to do it. This is
2 a step in that direction. Green roofs are awfully
3 expensive. I don't know 50 percent credit on your tax
4 -- on your fee will be enough to amortize one.

5 MR. MOEGLING: That's a question that the Blue
6 Ribbon Committee brought up, is the 50 percent tax
7 credit enough? The basic problem, you heard earlier,
8 the cost of this program for sampling to approve what
9 you've done is as expensive as doing it. You can't
10 give them 100 percent credit because you have to go
11 through the same thing in the approval part of it,
12 sampling part of it, monitoring part of it. Right now
13 it sits at 50 percent. You've had a few --

14 MR. MINKARA: I want to add, this 50 percent is
15 for a facility that have existing practices, like green
16 roofs or impervious payment or industrial facilities
17 that are in compliance with the State regulations, get
18 20 percent, in addition, if they have other stormwater
19 controls or detention pond also would give you some
20 credit, all skimmers will give you credits.
21 We're offering more credits for green infrastructure.
22 But all stormwater controls, we'll give you some
23 credit.

24 In addition, a facility that don't have any
25 existing controls, they can apply for -- they can

1 submit an application for proposing a mitigation of
2 their site, implementing new measures to reduce the
3 runoff or improve the runoff from their parking area to
4 different practices. They can get current credit, its
5 75 percent the first year for proposal that will follow
6 up with some corrective measures.

7 MR. MOEGLING: Up to 75 percent. That's one of
8 the things -- we said it's up to 50 percent.

9 MR. MINKARA: 50 percent for up to existing, 75
10 percent. Just for the first year for facility that
11 they want to retrofit, they want to do new measures,
12 will get more credit but just for one year.

13 MR. WALLIS: That's different than the original
14 total?

15 MR. MINKARA: Correct. We have made some
16 modification to it. It's on our website, correct.

17 MR. MOEGLING: Again, that is being looked at
18 by the Blue Ribbon Committee, checking the other
19 cities, see what other percentages the others came up
20 -- the last meeting was Franklin, Tennessee, does have
21 75 percent. Unfortunately, according to a fellow that
22 worked there, they never had anybody to apply. So 75
23 percent of zero doesn't help you a lot.

24 MR. STEIN: Maybe if they raise their taxes or
25 raised their fee, gave them 75 percent credit, they

1 would do it.

2 MR. MOEGLING: Comes down to return on
3 investment. And I asked that question in our last
4 meeting, what would you normally expect? What is your
5 payback to attract people? The answer was, it depends
6 on the situation. They were particularly talking about
7 churches, and what does a church expect in return on
8 their investment? And the answer on each one of them
9 is different. You have to look at that and somewhere
10 you reach a point where you develop the incentive to go
11 to these type arrangements.

12 MR. STEIN: Move to adjourn.

13 MR. MOEGLING: I want to make sure, if anybody
14 had anything for the Board to send to the Blue Ribbon
15 Committee tomorrow night. Certainly you're more than
16 welcome to be there. I have seen one notice, so I
17 don't know how many people know it's happening. We'll
18 find out.

19 We have a motion to adjourn. All in favor, say
20 aye.

21 (All said aye in array.)

22 MR. MOEGLING: See you some other -- Monday.

23 MR. MINKARA: Thank you so much for staying
24 late.

25 (End of proceedings at 6:00 p.m.)

1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE)
)
 3 HAMILTON COUNTY) SS.

4 I, CLAUDETTE ADAMS COTTER, Registered
 5 Professional Reporter, State of Tennessee, do hereby
 6 certify that the said proceedings were taken in machine
 7 shorthand by me at the time and place aforesaid and was
 8 thereafter reduced to typewritten form, consisting of
 9 110 pages therein; that the foregoing is a true
 10 transcription of the proceedings had.

11 I further certify that I am not employed
 12 by, related to, nor of counsel for any of the parties
 13 herein, nor otherwise interested in the outcome of this
 14 matter.

15 IN WITNESS WHEREOF, I have affixed my
 16 signature on this 16th day of March, 2010.

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 19 CLAUDETTE ADAMS COTTER,
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